TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~940.~~ 78.

CALVIN R. NUTT, JULIA W. NUTT, AND LILY N. WARD, PLAINTIFFS IN ERROR,

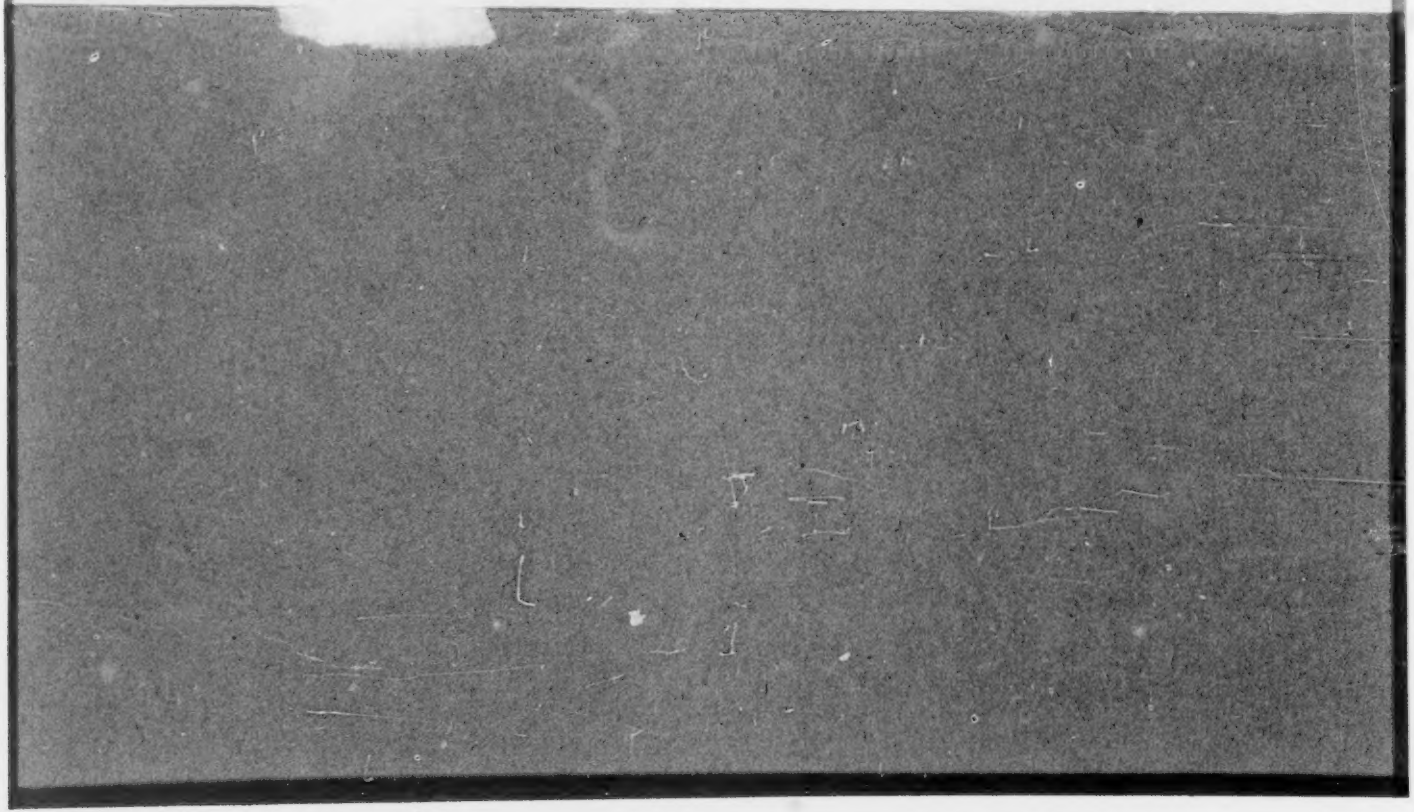
vs.

S. PRENTISS KNUT AND JOHN R. NUTT, ADMINISTRATOR *DE BONIS NON C. T. A.* OF THE ESTATE OF HALLER NUTT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED AUGUST 13, 1904.

(19,440.)



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a Chancery Court of Adams County.

S. P. KNUT
vs.
JOHN K. NUTT, Adm'r *d. b. n.* Estate of Haller Nutt, Dec'd. } No. 10896.

Filed April 18, 1903.

E. W. BROWN, *Clerk*,
By W. J. BROWN, JR., *D. C.*

1 *Transcript.*

Pleas and proceedings had before W. P. S. Ventress, chancellor of the fourth chancery district of the State of Mississippi, in Adams county, said State, in vacation.

In the Matter of the Estate of HALLER NUTT, Deceased. No. 1726.

S. PRENTISS KNUT
vs.
JOHN K. NUTT, Administrator *d. b. n., c. t. a., et al.*, of the Estate of Haller Nutt, Deceased.

Bill of Exceptions.

Be it remembered that by agreement of counsel the following proceedings were had before the chancellor in vacation, towit:

S. Prentiss Knut read his petition and amendment, which is in words and figures as follows, towit:

Petition.

STATE OF MISSISSIPPI,
Adams County.

In the Chancery Court of said County.

S. P. KNUT
vs.
JOHN K. NUTT, Administrator of the Estate of Haller Nutt, Deceased, and John K. Nutt, Leota; Miss Julia W. Nutt, Melrose, Mass.; Calvin R. Nutt, Frederick, Md.; Lillia Nett Ward, 15 Chestnut St., Melrose, Mass.; Lissie Forsyth, Tacoma, Washington, and Mary Forsyth.

Your petitioner with respect shows to this honorable court the following facts:

The estate of Haller Nutt, deceased, has recently received from the United States Government the sum of $89,999.88, on account of

a claim against said Government, the payment of which has been made to John K. Nutt, administrator of said estate.

In the year 1878 your petitioner became associated with James W. Denver, now deceased, who was duly appointed attorney
2 representing the said estate, as per contract and powers of attorney, copies of which are herewith filed, marked Exhibits "A" & "B."

That through the labor of petitioner conjointly with the aforesaid Denver, Congress passed an act August 7, 1882 (22 Stats. p. 734.) referring the claims of the said estate to the quarter master general for examination and adjustment. and to report the facts to Congress.

Under that said act a mass of evidence was gathered together and procured by petitioner in substantiation of the claims, and the quarter master general, having examined and adjusted the facts, duly reported his findings to Congress, whereupon on July 5, 1884, (22 Stats. p. 552) Congress made an appropriation to pay to the estate the sum of $35,556.17.

That according to the above mentioned contract, the claimant at that time being Julia A. Nutt, executrix, paid the one third of the amount received, as will appear by account, a copy of which is herewith filed, marked Exhibit "C", of which petitioner received his due share on account of his services.

That the aforesaid amount not being sufficient to pay the said claims, the said Denver and petitioner went before Congress and sought further redress.

That in the year 1786, petitioner and the said Denver, being in full partnership, agreed to a dissolution, which was consummated as per agreement, (copy herewith marked Exhibit "D") dated March 19, 1887.

That said agreement of dissolution was made with the full knowledge of executrix, and with her full approval, and with the authority conveyed to him therein, the said Denver transferred to petitioner the aforementioned agreement for fees and his powers of attorney, as per agreement and contract above mentioned as Exhibits "A" & "B".

Petitioner now brought suit in the Court of Claims, suing as for a balance stated; but the opinion of that court being adverse, he appealed the case to the Supreme Court of the United States, which court sustained the opinion of the lower court. Ex. "G".

That on February 16, 1887, the said claim was referred by Congress, under the act of March 3, 1883, to the Court of Claims for findings of fact.

3 That thereupon petitioner appeared, representing the claimant, and has ever since been the sole attorney of record in the said claim, first with the approval and consent and agreement of the said executrix, upon her death, with the consent and approval of her successor, J. C. Williams, administrator, and upon his death, with John K. Nutt, the present administrator.

That petitioner succeeded to the contract made by the executrix

with the said Denver, with full knowledge, consent and approval of the said executrix, as also with the full knowledge of the said administrators.

That on January 9, 1891, the Court of Claims handed down findings in this claim, after much new testimony had been taken and long arguments made in said court. But upon the failure of Congress to pay these findings the claim was again referred to the Court of Claims, on February 20, 1895, for refinding of facts, whereupon petitioner took new and additional testimony. After long argument the said court rendered its findings again on December 9/1899, all of which will appear from the record of the Court of Claims, as herewith shown (Exhibits E & F).

That petitioner appeared before Congress as the attorney for the said estate, and by argument before the committees of the Senate and House of Representatives induced Congress to make the aforementioned appropriations of $89,999.88.

Your petitioner now desires to receive payment from the administrator in accordance with the contract filed herewith, and while your petitioner is not advised as to there being any necessity for making the heirs and devisees, who claim to be entitled to a distribution of the amount recovered, parties to the petition, yet in order that all of the parties may be before the court, and that they can have the opportunities of propounding such objections as they may have as to the payment by the administrator of your petitioner's fee, and to the end that the administrator may be thoroughly protected in such payment your petitioner has made them parties, their names and post office addresses are shown above, and petitioner asks that summons may issue for the administrator, and that publica-
4 tion may be made for the non-residents, citing them to appear at the next term of court, and make answer to this petition

[L. S.] S. P. KNUT.

Subscribed and sworn to before me, this eleventh day of June 1902.

JAMES B. SHALLENBERGER,
Notary Public, D. C.

And afterwards towit, on the eighteenth day of December, 1902, the following amendment to said petition was filed with the clerk, by leave of the court, which is in words and figures as follows, towit:

Amendment.

Petitioner avers that if he is not entitled to pay under said contract, he is entitled to compensation for services rendered as above alleged and set forth, what they are reasonably worth, and he avers that they are reasonably worth the sum of thirty thousand dollars, he therefore prays that he may be allowed the sum of thirty thousand

dollars (30,000.00) for said services, and that said John K. Nutt, administrator as aforesaid, be directed to pay to your petitioner said sum of thirty thousand dollars ($30,000.00).

And afterwards, towit, the following exhibits were filed with the clerk, whish is in words and figures as follows, towit:—

EXHIBIT "A."

This agreement between James W. Denver, in the city of Washington and District of Columbia, of the first part, and Julia A. Nutt, executor or the estate of Haller Nutt, deceased, of the city of Natchez and State of Mississippi, of the second part, witnesseth:

That the party of the first part agrees to take exclusive charge and control of a certain claim which the party of the second part holds against the Government of the United States, for the use of property and for property of which the said Haller Nutt and his estate was deprived by the acts of officers, soldiers and employees of the United States in Louisiana and Mississippi in the years 1863, 1864 and 1865, amounting to one million of dollars, more or less, and to prosecute the same before any of the courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the departments of Government, or before the Congress of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or through any diplomatic negotiations as may be deemed by him for the best interests of th- party of the second part.

And in consideration therefor the party of the second part agrees to pay the party of the first part a sum equal to 33⅓% of the amount which may be allowed on said claim, the payment of which is hereby made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be issued thereon.

This agreement not to be affected by any services performed by the claimant or by any other agents or attorneys employed by him. All expenses of printing, costs of court and commisson fees for taking testimony are to be charged to the party of the second part, and the party of the second part agrees to execute from time to time such powers of attorney as may be convenient or necessary for the successful prosecution and collection of said claim.

No revocation of any authority conferred on the party of the first part by this agreement or any power of attorney relating to the business covered by the same to be valid.

In witness whereof, the party of the second part has hereunto set her hand and seal, this eighteenth day of May A. D. 1874.

(Signed) JULIA A. NUTT. [SEAL.]

6 EXHIBIT "B."

Court of Claims.

JAMES C. WILLIAMS, Adm'r, &c., of Haller Nutt, Deceased,
vs.
THE UNITED STATES.
} Congressional No. 1851.

I, Archibald Hopkins, chief clerk Court of Claims, hereby certify that the annexed is a true copy of a power of attorney filed in the above entitled cause, March 21, 1887.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington city, this — day of June A. D. 1902.

[L. S.] ARCHIBALD HOPKINS,
Chief Clerk.

7 *Power of Attorney.*

Know all men by these presents that I, Julia A. Nutt, executrix of Haller Nutt, deceased, of the city of Natchez in the State of Mississippi, have made, constituted and appointed, and by these presents do make, constitute and appoint James W. Dever in the city of Washington, District of Columbia, my true and lawful attorney irrevocable, for me in my name, place and stead, to prosecute a certain claim against the Government of the United States, for property used and for property of which said Haller Nutt and his estate was deprived by United States officers, soldiers and employees, in Louisiana and Mississippi, amounting to one million dollars, more or less, before any court of the United States, or before any of the departments of the Government, or before the Congress of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or through any diplomatic negotiations, to collect the same; and from time to time to furnish any further evidence necessary, or that may be demanded, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers and bonds of indemnity or appeal and to endorse all drafts and vouchers in my name, either by or without indicating it is done by procuration which may be requisite in the prosecution or collection of said claim hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do, or cause to be done by virtue hereof.

The compensation of my said attorney being contingent upon the payment or adjustment of said claim. This power of attorney is intended to include the protection of his interests, as per agreement of this date, and is irrevocable.

In witness whereof I have hereunto set my hand and seal this eighteenth day of May, eighteen hundred and seventy-four.

JULIA A. NUTT. [L. S.]

8 Two witnesses:

A. ST. C. DENVER.
JOHN T. C. CLARK.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Be it known that this eighteenth day of May in the year eighteen hundred and seventy-four, before me the undersigned, a justice of the peace in and for said county and State, personally appeared Julia A. Nutt, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first read over to *him* and the contents thereof explained, acknowledged the same to be *his* act and deed, and that I have no interest, present or prospective, in the claim.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

JOHN T. CLARK, *J. P.* [SEAL.]

Attach certificate of court.

Endorsements: Power of attorney. Claim of Mrs. Julia A. Nutt, exrx. for property taxen by United States. Third Auditor's office July 11th, 1884. Filed by J. W. Denver, Washington, D. C. Cong. 1851. No. 101. Filed March 21, 1887. J. R.

By virtue of the authority granted herein, I appoint S. Prentiss Knut my substitute to prosecute this case in my stead, March 29, 1887.

J. W. DENVER.

9 EXHIBIT "C."

Statement of Account Between Julia A. Nutt and J. W. Denver, July 19, 1884.

Amount of Treasury draft this day collected		$35,556.17
Amount of fee per contract (one third)	$11,852.06	
Amount of balance due J. W. Denver on agreement of June 1, 1874, and this day credited thereon and delivered to Mrs. Nutt	1,300.43	
		13,152.54
Amount due Julia A. Nutt and paid her according to her directions as follows		$22,403.63
By draft No. 7489 of National Metropolitan Bank of Washington D. C. on the National Park Bank of New York payable to the order of Julia Nutt	$15,000.00	
By draft of same on bank payable to order of C. A. Britton	3,500.00	
By cash deposited in the National Metropolitan Bank, Washington, D. C. to credit of Julia A. Nutt	3,903.63	
		$22,403.63

Received Washington D. C. July 19, 1884, of J. W. Denver, per A. St. C. Denver the sum of $22,403.63, as above stated in full settlement of the amount due me on Treasury war warrant No. 2359, of this date, after deducting from the amount of said warrant, all fee for services in prosecuting the claim to date, and the balance due him by me on agreement of June 1, 1874, as per statement, this settlement not to affect the further prosecution of my claim for more, in accordance with my agreement of May 18, 1874, on the terms therein set forth.

(Signed) JULIA A. NUTT.

10 EXHIBIT "D."

In the settlement this day made by and between J. W. Denver and S. Prentiss Nutt, it is agreed by and between them, that the said Denver shall and hereby does turn over to the said Nutt all his right, title and interest in and to the claim of Mrs. Julia A. Nutt, exc. against the Government, the French spoliation claim of the estate of John Cox dec'd and the claim of M. V. Dalgun adm'r against the United States, and as to all other cases the said Nutt relinquishes and transfers to said Denver, all and singular, the

papers, documents and whatever else belongs to any or all of said cases, now in his, the said Nutt's possession, and all his interest therein.

This is not to release the notes heretofore given by said Nutt to said Denver; one dated July 20, 1885 for $185.00; one dated January 23, 1886, for $400.00; and one dated March 12th, 1887 for $827.75 but in regard to all other matters, it is in full and final settlement this day made and agreed to.

(Signed) J. W. DENVER.
S. PRENTISS NUTT.

Washington, D. C., March 19, 1887.

NOTE.—Exhibit "E"—Printed matter. See index of original exhibits. By consent transferred to box of exhibits.

11 EXHIBIT "F."

Court of Claims.

JULIA A. NUTT, Executrix of Haller Nutt,
v.
THE UNITED STATES. } No. 15652.

I, John Randolph, assistant clerk of Court of Claims, hereby certify that the annexed is a true copy of the docket entries in the above entitled case.

In testimony whereof I have hereunto set my hand and affixed the seal of this court at Washington city, this 11th day of June A. D. 1902.

[L. S.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

12 M. F. Morris. May 11, 1887.

JULIA A. NUTT, Extr. of Haller Nutt,
vs.
THE UNITED STATES. } 15652.

May 11, 1889. Petition filed. Defendants notified. Testimony ordered.
May 14, 1887. Printed petitions received. 5 to defendants.
May 16, 1887. Deposition of S. Prentiss Knut for claimant filed. Defendants notified.
July 8, 1887. Traverse filed. Attorney notified.
November 10, 1887. Motion for leave to file amended petition filed. Allowed. Defendants notified.

November 11, 1887. Printed copies amended petition and claimant's request for fact and brief filed. 5 to defendants.
December 27, 1887. Defendants' motion to dismiss for want of jurisdiction filed. Attorney notified.
December 29, 1887. Three papers filed by defendants. Attorney notified.
December 30, 1887. Brief on motion of defendants to dismiss for want of jurisdiction and also answer to brief of claimant filed. Attorney notified.
January 14, 1888. Defendants' request and brief filed. Attorney notified.
January 23, 1888. Argued and submitted.
January 23, 1888. Motion of defendants to dismiss submitted.
January 30, 1888. Nott, J., read the opinion of the court. Petition dismissed. Court filed findings of fact.
February 6, 1888. Application of claimant for allowance of appeal filed in open court. Allowed.
13
March 3, 1888. Record on appeal delivered to attorney of record for claimant.
May 29, 1888. Mandate of Supreme Court, U. S. affirming judgment filed.

14 EXHIBIT "G."

Court of Claims.

JULIA A. NUTT
vs.
THE UNITED STATES. } Congressional No. 1851.

I, John Randolph, assistant clerk Court of Claims, hereby certify that the annexed is a true copy of the docket entries in the above entitled case.

In testimony whereof I have hereunto set my hand and [L. S.] affixed the seal of said court at Washington city, this 11th day of June, A. D. 1902.

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

15

March 4, 1887.

JULIA A. NUTT
v.
THE UNITED STATES. } 1851.

Order Committee War Claims, House of Representatives, dated February 16, 1887, referring claim and one paper filed.

Notified Assistant Attorney General. Claimant's address not given.

S. P. Knutt.

March 18, 1887. Call on clerk House — Representatives issued.
March 21, 1887. Two hundred and forty-five papers received from clerk House of Representatives filed. Parties notified.
April 23, 1887. Depositions for claimant filed. Parties notified.
May 6, 1887. Depositions for defendants filed. Parties notified.
April 27, 1888. Motion to extend time for filing petition filed. Allowed. Petition filed. Defendants notified.
May 2, 1888. Printed petitions received. 5 to defendants.
May 12, 1888. Request for finding of facts filed. Defendants notified.
December 1, 1888. Deposition of Mrs. Julia A. Nutt filed by claimant. Parties notified.
May 6, 1889. Continued.
November 17, 1890. Motion of defendants to dismiss for want of jurisdiction filed. Claimant's attorneys notified. (To be heard at trial on merits.)
November 17, 1890. Defendants' brief on merits filed. Parties notified.
November 25, 1890. Plea in bar filed by defendants. Attorney notified.
November 25, 1890. Demurrer to plea in bar filed by claimant. Defendants notified.

16

November 26, 1890. Motion to dismiss for want of jurisdiction argued and submitted.
December 1, 1890. Defendants' answer to petition and suggestion of fact filed. Attorney notified.
December 1, 1890. Richardson, Ch. J., read the opinion of the court overruling motion of defendants to dismiss.
December 1, 1890. Argued and submitted on loyalty.
December 1, 1890. Loyalty of Julia A. Nutt found.
Dec. 1, 2, & 3, 1890. Argued and submitted on merits.

January 5, 1891. Court filed findings of fact to be certified to Committee on War Claims, House of Representatives.
January 9, 1891. Motion to send up findings filed by claimant. (Defendants consenting) Allowed.
January 9, 1891. Findings of fact certified to Committee on War Claims, House of Representatives.
November 23, 1892. Report of Treasury Department filed by defendants. Attorney notified.

JULIA A. NUTT, Widow and Executrix of Haller Nutt, Deceased,
vs.
THE UNITED STATES. } 1851.

February 21, 1895. Resolution of the Senate of the United States referring claim (dated February 20, 1895) and three accompanying papers (1, 2 & 3) for reinvestigation and refinding of facts filed. Parties notified.
June 19, 1895. Call on War Department issued.
June 21, 1895. Call on Treasury Department issued.
June 22, 1895. Reply of War Department filed. Parties notified.
July 16, 1895. Reply of Treasury Department filed. Parties notified.
17
March 16, 1896. Deposition- of Haller Nutt, Jas. O. Cavanaugh, Mrs. Julia A. Nutt, Stephen Hartgrove and Reed Gaskins filed with exhibits to deposition "A" to "N" (being original papers previously filed). Parties notified.
March 16, 1896. Deposition of Stephen Hartgrove for claimant filed. Parties notified.
March 31, 1896. Motion to file petition filed. Allowed. Petition filed; copy and notice to defendants.
April 20, 1896. Claimant's motion to advance on trial docket filed. Handed judge. Defendants notified.
April 20, 1896. Motion overruled by judges in conference.
April 21, 1896. Claimant's request for findings of fact filed. Defendants notified.
November 17, 1896. Motion of claimant to amend petition filed with request for findings of fact and synopsis of brief annexed, filed. Copy and notice to defendants.
November 19, 1896. Defendants' printed brief on merits and request for findings of fact filed. Attorney notified.

November 20, 1896. Motion of claimant of November 17, 1896, to amend petition filed. Allowed. Amendment to petition filed.
November 25, 1896. Argued and submitted.
January 25, 1897. Remanded to trial calendar for re-argument before a full bench.
March 15, 1897. Motion for leave to substitute James C. Williams, *c. t. a. d. b. n.* of the estate of Haller Nutt, deceased, instead of his executrix, deceased, and for leave to file petition and certificate of appointment as administrator filed. Handed judges. Allowed.
March 16, 1897. Re-argument of case begun.
March 16, 1897. Motion of March 15, 1897, to file amended petition allowed. Amended petition and certificate of appointment as administrator filed. Copy of petition and notice to defendants.

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March 17, 1897. Re-argument concluded and case submitted.
June 3, 1897. Affidavit of A. D. Geoghehan for claimant filed. Defendant notified.
June 7, 1897. See order of court striking from the files the affidavit of A. D. Geoghegan for reasons therein stated.
December 6, 1897. Court filed findings of fact to be certified to the Senate of the United States.
May 22, 1899. Motion of claimant's attorney to send up findings filed. (Defendants consenting) Allowed.
December 9, 1899. Findings certified to the President of the Senate.

19 And afterwards towit the following answer of Misses Elizabeth and Mary Forsythe were read to the court, which was in words and figures ax follows, towit:

STATE OF MISSISSIPPI, }
County of Adams. }

In the Chancery Court. To October Term, 1902.

In the Matter of the Estate of HALLER NUTT, Deceased C. # 1726, B. # 237.

The Joint Answer of Misses Elizabeth Forsythe and Mary Forsythe to the Petition of S. P. Knutt in Said Matter. Filed June 21st, 1902.

To the chancery court of said Adams county:

Respondents, Misses Elizabeth and Mary Forsythe, being cited to appear and answer the said petition of S. P. Knutt to such portions

thereof as they are advised it is necessary to answer, answering says:

They admit that John K. Nutt, the present administrator of the estate of Haller Nutt, deceased, has received from the United States Government the sum of $89,999.88 on account of a claim of said decedent against the Government.

Respondents having no personal knowledge as to the facts alleged by petitioner, S. P. Knut, relative to the employment of J. W. Denver, as attorney to represent said estate in the matter of said claim, nor of the association of said Knut as co-partner with said Denver, nor of the dissolition of the co-partnership and transfer of the alleged contract of employment, nor of the services alleged to have been rendered in connection with said claim, nor of any transactions between said petitioner, the former executrix and administrator of the estate, neither admit nor deny said allegations, but ask that in adjudicating the matter the court will require sufficient and legal proof of all material facts, by the petitioner alleged, and that giving to the same the legal weight to which they may be entitled, the court may render such decree, and give to the administrator such instructions relative to the fee claimed by said S. P. Knutt as thepremises considered may be lawful and proper.

20 And now having answered, respondents ask to be hence dismissed with their reasonable costs.

REED & BRANDON,
Sol'rs for Misses Elizabeth and Mary Forsythe.

And afterwards towit the following answer of John K. Nutt, administrator of the estate of Haller Nutt, deceased, as administrator and for himself individually, was read in the court, which was in words and figures as follows, towit:

STATE OF MISSISSIPPI, }
County of Adams. }

In Chancery Court.

S. P. KNUTT
vs.
JOHN K. NUTT, Adm'r, ET AL.

The Separate Answer of John K. Nutt, Administrator of the Estate of Haller Nutt, Deceased, as Administrator and for Himself Individually.

Now comes respondent, and answering such portions of the petition filed herein by S. P. Knutt, as he is advised that it is necessary, would show unto this honorable court that it is true, as alleged in the petition that he, as administrator of the estate of Haller Nutt,

deceased, has recently received from the United States Government the sum of $89,999.88, and that he holds such money as such administrator. Respondent was only recently appointed administrator of such estate, and has no personal knowledge in regard to the employment of James W. Denver as attorney to represent the estate in its claim before Congress, such employment having been made by respondent's mother, Julia A. Nutt, as executrix, and the said Julia A. Nutt being now deceased, and your respondent has
21 no knowledge in regard to the transfer of the contract of employment from the said Denver to the said Knutt, or as to the services rendered the estate in regard to the said claim by the said S. P. Knutt, nor any contract that may have been made between the said S. P. Knutt and the former administratrix of the estate. Your respondent is advised that allowance will be made him by this court for the payment of attorneys fees, only when the amount of such attorney's fees is deemed reasonable by the court, and respondent submits to the court the question of the reasonableness of the fee claimed by S. P. Knutt, and prays the instruction of this court as to the payment of same. And respondent will ever pray.

JOHN K. NUTT.

STATE OF MISSISSIPPI, }
County of Washington. }

Before me J. M. Basket, a justice of the peace, in and for the first supervisors district of said county, John K. Nutt makes oath that the facts stated in the foregoing answer are true and correct.

Sworn to before me this 25th day of July, 1902.

J. M. BASKETT,
Justice of the Peace.

22 And afterwards, towit, the following joint answer of Calvin R. Nutt, Julia W. Nutt and Lillie Nutt Ward, was read to the court, which was in words and figures as follows, towit:

STATE OF MISSISSIPPI, }
County of Adams. }

In Chancery Court, October Term, 1902.

In re Estate of HALLER NUTT, Deceased. No. 1436.

The Joint Answer of Calvin R. Nutt, Julia W. Nutt, and Lillie Nutt Ward to the Petition of S. P. Nutt. Filed June 21st, 1902.

To the chancery court of said county:

Respondents Calvin R. Nutt, Julia W. Nutt and Lillie Nutt Ward in answer to said petition, or to so much and such parts thereof as

they are advised that it is expedient for them to make answer to, answering, say:

1st. They admit that the estate of Haller Nutt, dec'd has recently received from the United States Government the sum of $89,999.88 on account of a claim against said Government, and that John K. Nutt as administrator *d. b. n. c. t. a.* of said estate has collected said sum from the said Government.

2nd. They admit that said petitioner became associated with said Jas. W. Denver during the year 1878, but not knowing the facts with reference to the contract and power of attorney, alleged copies of which are filed as Exhibits "A" and "B" to said petition, they neither admit nor deny that said papers so filed as exhibits are true copies of said contract and power of attoerney, and call for a strict proof thereof and production of the originals.

3rd. They admit that on August 7th, 1882, Congress passed an act referring the claims of said estate to the quarter master general for examination and adjustment, with instruction to report the facts back to Congress; but deny that petitioner is entitled to any compensation from this estate by reason of any alleged services rendered in connection with said matter while admitting that the then executrix of said estate, Julia A. Nutt, paid to said Denver one third of the amount appropriated by Congress on July 5th, 1884;
23 yet they deny that there was any legal liability resting upon said estate to pay said sum.

4th. While it may be true, as alleged in said petition, that petitioner was in full partnership with said Denver in 1886, and that said partnership was dissolved at that time, yet they deny that either then or at any other time, petitioner acquired any rights against this estate, by reason of the alleged transfer to petitioner, by said Denver of the alleged agreement for fees and power of attorney.

5th. They deny that petitioner is entitled to any compensation from this estate by reason of the alleged services rendered by him, as set up in his petition, before the Court of Claims, the Supreme Court of the United States or any committee in Congress.

6th. While not denying that petitioner has been recognized by the executrix and subsequent administrators of said estate as its attorney of record against the United States Government, yet they deny that there is any legal liability resting upon said estate by reason of said recognition, and respondents now aver and charge the truth and fact to be, that the original contract and power of attorney as assignee of which petitioner claims to recover from the present administrator 33⅓% of said sum of $89,999.88, were contrary to good morals and public policy, were null and void, so far as they undertook to vest a right to a contingent fee in said Denver, and conferred upon said Denver no rights for the recovery of any fee against this estate, which a court would recognize and enforce. And respondents further charge that said petitioner as assignee of said Denver, occupies no better position than his assignor had, and that as such assignee he has no standing in this court for the enforce-

ment of said void contract, or for the enforcement of any claim whatever for professional services rendered by him, or alleged to have been rendered by him in behalf of said estate in connection with said claim against the United States Government.

And now having fully answered, respondents pray that the petition of the said S. P. Knutt may be dismissed at his own proper cost and charges.

JAS. A. CLINTON,
BROWN & MARTIN,
Attorneys for Respondent.

24 And afterwards to wit, the following testimony was read in open court, which is in words and figures as follows, to wit:

In the Chancery Court of Adams County, State of Mississippi.

S. PRENTISS KNUTT
vs.
JOHN K. NUTT, Adm'r, ET AL. } No. —. In Chance-y.

Depositions of witnesses produced, sworn, and examined at the hour of three o'clock, on the tenth day of December, 1902, at the offices of John Paul Jones, Esq., attorney at law, 1331 F street, Washington, D. C.

Pursuant to stipulation heretofore entered into by and between S. Prentiss Knutt, complainant herein, and Brown & Martin, of Natchez, Mississippi, attorneys for defendants in interest, before me the undersigned, Henry F. Miller, a notary public in and for the District of Columbia, when were present Mr. John Paul Jones, counsel and solicitor on behalf of the claimant and Mr. D. W. Baker, coulsel and solicitor on behalf the defendants.

The following persons having been introduced on behalf of the complainant were by me severally sworn before any questions were put to them, to tell the trust, the whole truth and nothing but the truth relative to said cause, and thereupon in answer to the following interrogatives, they deposed and said.

DECEMBER 10, 1902—3 o'clock p. m.

JACKSON H. RALSTON, a witness produced and sworn, testified as follows:

Mr. JOHN PAUL JONES:

Q. Mr. Ralston, please state your name, age and occupation.
A. Jackson H. Ralston; forty five years; lawyer.
Q. Where do you reside?
A. Hyattsville, Maryland.

Q. How long have you practiced here?

A. Twenty one years.

Q. What relation have you, if any with the educational
25 institutions of this city?

A. None, except with the National University law school, in which I have filled various chairs for the past twelve years.

Q. Are you the gentleman who was connected with the Pious Fund case recently tried at the Hague?

A. Yes, I was the agent of the United States Government and of counsel in the case, having been attorney for the parties claimant for the past three years.

Q. What experience have you had in the practice of your profession in the Court of Claims?

A. My experience in the Court of Claims is much more limited than in general practice, but I have at the present time, and for several years last past had a number of cases before that court, some coming under its original jurisdiction, and others by way of reference for finding of facts from either house of Congress, under the Tucker & Bowman acts.

Q. By Bowman act you mean the act of March 3, 1883?

A. Yes, and by Tucker act, 1887.

Q. Are you familiar with the contingent fees usually charged by members of the Washington bar in cases for stores and supplies taken and used by the Federal troops during the war of the rebellion?

A. Somewhat. I am, of course, familiar so far as I am concerned, and have had occasion to become more or less acquainted with the fees charged in such cases by other attorneys.

Mr. BAKER: That was as to cases of stores and supplies before the Court of Claims?

Mr. JONES: Yes, stores and supplies.

It is hereby agreed between counsel hereto that the hypothetical question now addressed to Mr. Ralston, and to be hereafter addressed to subsequent witnesses, shall be marked "A," and attached hereto and made a part hereof, as if in each place where called for, it were inserted at leng*ht*.

Mr. BAKER: I object to the question on the ground that the witness has not shown himself competent to testify as an expert in this
matter, nor has he shown that he has has sufficient familiar-
26 ity with contingent fees in the Court of Claims or before Congress to testify as to what would be a proper compensation. I further object to it on the ground that as yet there is no evidence in the case upon which to base a hypothetical question, and that there is no evidence to warrant any of the statements contained in said question.

A. Judging from my own experience, fees charged in cases with which I am associated, and my knowledge of other cases similar in character, I should consider the contingent fee of one third a

low one, and should expect forty per cent. to be charged and would not even be surprised if more were asked.

Q. Mr. Ralston, you are acquainted with the complainant in this proceeding, Mr. Knutt?

A. Yes.

Q. Did you have any professional relations with him with regard to this case?

A. Yes, he employed me some three years or more ago, I think.

Q. What did he agree to pay you?

Mr. BAKER: I object, unless the contract is in effect at the present time.

Mr. JONES: Whatever contract you had with Mr. Knutt is still in force and effect, is it not?

A. That depends upon what you mean by "force and effect." If there were further services necessary to be performed, Mr. Knutt has the right to call on me for them. Do you want me to answer that question?

Q. If Mr. Knutt recovers in this proceeding, he will be indebted to you in the sum of seven and one half per cent. on the amount recovered?

Mr. BAKER: I object to that on the ground that it is immateri-l to the issue in this case, whether Mr. Knut- has promised to pay Mr. Ralston or any other attorney.

A. Yes.

Q. You will please state what you did in this case in a professional way under your employment by Mr. Knutt.

A. Mr. Knutt came to me and desired me to enter into the case with him. He put in my hands all the briefs which had been
27 filed theretofore in the case; the several findings of the Court of Claims and possible opinions, in addition, of the Court of Claims. I am not quite sure about that. He desired me to examine them and study them, and to express an opinion to him as to what branches of his contention could be sustained, and furthermore desired me to assist him in the preparation of arguments needed to sustain the claim which was then pending, amounting to something over two hundred thousand dollars, as I remember it. I studied them carefully, considering the legal aspect of the several items summing up the entire claim, and had a number of interviews and consultations with him. Later he desired me to appear before the Senate Committee on Claims to argue the matter. That I did before the sub-committee appointed with reference to the case; Mr. Knut and myself presenting the argument. We were very strictly questioned as to every item involved in the case, and compelled to prove our right as best we could to maintain our position as to all of them. We claimed as I have intimated, the full amount, over two hundred thousand dollars, but two items were quite vigorously antagonized and thrown out; one was for twenty thousand

dollars as I remember for the destruction of a cotton gin, and the other for one hundred and eleven thousand dollars for destruction of cotton, if I remember correctly. We had not been confedent afyer a study of the case of our ability to recover upon the points, but we made the best fight we could for them, as we did for all the rest of the claim, which, as I say, was vigorously discussed and gone over with, item by item, and the findings of the Court of Claims with reference to the matter carefully analyzed. My professional labors were about as I have stated. (My firm also saw to the filing of letters of administration of the present administrator with the Senate.)

NOTE.—This interliniation was made by witness Ralston before signing the deposition, and by consent of counsel of both parties.—HARRY F. MILLER, *Notary Public.*

Q. Was any character of work or labor expected or required of you except purely professional labor?

Mr. BAKER: I object to the question as leading.

A. Certainly none was required, and I have no reason to suppose that any was expected.

28 Q. Did you perform any character of labor other than strictly professional.

A. I did not.

Q. Reference was made in the early part of your examination to your employment in what is known as the Pious Fund case, I ask you if the fees in that case were contingent or otherwise.

Mr. BAKER: I object to that on the ground that it is immaterial to the issue in this case, and that case was entirely different character of case from the case here in dispute.

A. The fees in that case were contingent altogether.

Q. In what amount?

A. The amount involved in that claim, and we sought to recover, was nearly a million and a half dollars in gold. Our award was however, given in Mexican currency, but recognized a perpetual annuity, amounting to forty three thousand dollars per year, six per cent. interest on seven hindred thousand dollars, so that we recovered practically a million and a half Mexican dollars, with the recognition of a perpeutal annuity to the extent that I speak of. The fee in that case was twenty five per cent.

Cross-examination.

Mr. BAKER:

Q. You did not get twenty five per cent.?

A. The lawyers who were concerned in the case will get twenty five per cent.

Q. Who were the lawyers concenred in the case?

A. John F. Doyle, of San Francisco, William M. Steward and myself. There were others who appeared on briefs, but I am speaking now with reference to the twenty five per cent.

Q. That case was a case of entirely different character from the case here involved.

A. From my standpoint it was an easier case.

Q. You had to go to The Hague in that case.

A. Yes, I had to go to The Hague.

Q. You had to take with you a number of stenographers?

29 A. Yes; they were paid by the Government.

Q. About how many people went with you to look after that case?

A. I had a half dozen clerks, but in that case Congress made an appropriation of fifty thousand dollars, which will ultimately come out of the amount recovered, but which, had we lost, would have cost none of us anything, and I may say that my own expenses were provided for in addition out of the appropriation.

Q. You mean out of the congressional appropriation?

A. Yes.

Q. It was the first case that was argued before this international court, was it not?

A. Yes.

Q. When did you first come into this case here in dispute or rather mentioned in the hypothetical question.

A. I cannot give you the exact date. I should say something over three years ago.

Q. What exactly, have you done in that case, Mr. Ralston?

A. I think I have stated about all that I have done in the answer.

Q. Did you ever appear in the Court of Claims?

A. No.

Q. Did you ever appear more than once before the committee of Congress?

A. Twice, I think.

Q. These two cases, or the case mentioned here, there was an original finding in the quartermaster's department, was there not?

A. I believe there was, as to probably part of the property involved.

Q. Then there was a finding before the Court of Claims, was there not?

A. Yes.

Q. Did you and Mr. Knutt in any way increase the original finding in the quartermasyer's department?

A. I cannot speak of the services of Mr. Knutt in that connection, because they were performed before I came into the case. Our concern before Congress was with reference to the findings of the Court of Claims, not as to the quartermaster's.

Q. What did the Court of Claims find?

30 A. The Court of Claims finding, as you know, does not necessarily charge the Government with liability. The Court

of Claims found certain losses, aggregating two hundred and twenty-four thousand dollars, if I remember correctly, giving the items of the finding.

Q. The Court of Claims had already made its finding in the case before you entered it.

A. The Court of Claims had made its finding, pursuant, as I understand, to the labor of Mr. Knut.

Q. You do not know that, do you?

A. No, except so far as the records disclose.

Q. I asked you what you did do yourself that in any way benefitted the interests of the parties concerned?

A. You will understand, Mr. Baker, that there are many findings made by the Court of Claims which are not accepted by Congress. It does not follow that because a finding is had, an appropriation will be made. It may be that notwithstanding such finding, Congress may conceive that erroneous principles have been invoked to sustain the findings, so that the findings are subject to criticism and it is necessary to defend them; and in this case it was necessary for us not only to advocate and defend the findings as to the twenty thousand and one hundred and eleven dollars thrown out, but also as to the remainlng eighty-nine thousand dollars, and that we did.

Q. What were some of the questions in dispute with regard to the several items you speak of, questions of law and fact, and what were the questions of law involved in the case after the findings of the Court of Claims?

A. The questions which arise in these cases, and which arose in this, was as to whether all items constituted properly stores and supplies, or whether they were simple matters of depredation, or whether they were matters which, while perhaps taken by the Government, did not amount to stores and supplies within the meaning of the act. I do not know that I have stated it very clearly, but I think you will catch the idea.

Q. How long did you argue before Congress on this question?

A. I think probably a couple of hours, I cannot say exactly, on the two occasions, summing it up.

31 Q. Did you argue questions of law before the committee?

A. Questions of law as applied to this particular case, yes.

Q. Was this eighty nine thousand and odd dollars made up of numerous items?

A. Yes, sir.

Q. Can you state what they were?

A. I cannot now, no. I have not looked at the paper for two years.

Q. Did you have a written argument on this?

A. No.

Q. So that really all that you did in the matter was to appear before Congress and argue the case for a couple of hours.

A. No, that is hardly a fair statement. That may be all the work appearing in the case, so far as others were concerned, but as we all

are painfully aware, an hours' discussion may represent many hours labor.

Q. How many hours of labor did you put on the case?

Mr. JONES: I object to that as frivolous.

A. I could not say.

Q. How many cases have you had in the Court of Claims, say in the past five or ten years?

A. I do not know, forty or fifty.

Q. Are you the sole counsel in the case, or not?

A. As a rule my firm is.

Q. How many cases have you had before Congress other than this case?

A. It would be impossible for me to say. I should say in a general way, fifty or sixty. I want you to take that answer as guess work, but I would not think it would be less than that.

Q. Did you see any member of Congress about this case?

A. No.

Q. Any Senator about this case?

A. Not except as I have stated.

Q. Except when you appeared before the committee?

A. Yes.

Q. And you are not able to say whether or not you recovered any more than the finding of the quartermaster's department?

A. My present recollection, not having refreshed my memory by looking at the papers for a long while, is that the quarter-
32 master's report did not embrace these items.

Q. I will ask you Mr. Ralston, to see if you can by thinking the matter over to refresh your memory, and is it not a fact that the only item that Congress paid for are the items contained in the quartermaster's report, and that none of the other items for which you were fighting were ever authorized by Congress to be paid?

A. I could not refresh my recollection otherwise than by turning to my files.

Q. Can you tell us how much of your time, and Mr. Knutt's time, so far as you know, was devoted to trying to get twenty thousand dollars for the cotton gin and one hundred and eleven thousand dollars for the cotton?

A. It would be an utter impossibility to answer that question.

Q. How long have you known Mr. Knutt?

A. I have known Mr. Knutt, not well, but casually, for twenty years.

Q. Where is his office?

A. The last time I saw *his* him in his office was on G street between Fourteenth and Fifteenth, some months ago, six months ago.

Q. Did he have an office there?

A. That is where he officed, as I understood.

Q. Do you or do you not know whether he is a member of the bar of the Supreme Court of the District of Columbia?

A. My understanding is that he is.

Q. Do you know what sort of practice he engages in in the District of Columbia?

A. I do not think Mr. Knut is a local practitioner at all. I have not known him as such.

Q. Did you ever hear of him having any other cases than the ones herein mentioned?

A. It would not be fair to Mr. Knut scarcely, for me to answer that question, because I do uot know him well enough. As I stated, my acquaintance with him is casual, although my impression is that he had a number of cases in the Court of Claims. He can answer that better than I could.

Q. Have you been engaged in this case, or were engaged in it for some two or three years?

33 A. Three years.

Q. You were employed continually during that time?

A. I was employed whenever the necessity arose.

Q. When did you cease to have any connection with this cause?

A. I do not seem to have ceased yet.

Q. When was the last time you did any work on this case?

A. I do not think I have had anything to do for a year or two, any way, except filing administration papers, as I have said.

Interlineation was made by the witness Ralston, before signing the deposition, and by consent of counsel for *poth* parties.

HARRY F. MILLER, *N. P.*

Q. And how often have you seen Mr. Knutt in the last year or two?

A. I have seen him in the office a dozen times, probably.

Q. Do you know of your own personal knowledge of Mr. Knutt having any other cases, other than those cases before Congress?

A. No; I have not consulted Mr. Knut about his private business at all. I know nothing of it.

Q. Suppose you were informed that Mr. Knut was interested in the resukt of this action of Congress to the amount of one fifth, would that in any way affect your testimony in regard to what his compensation would be for the labor performed?

A. No.

Q. When you say what in your opinion would be a fair compensation, you were treating it as though the case were in your firm?

A. In my firm or in any other firm of which I have knowledge.

Q. You have a very extensive law practise in the District of Columbia

A. It keeps me busy at any rate.

Q. It keeps your partner busy, and also several assistant lawyers?

A. Yes.

JACKSON H. RALSTON.

Subscribed and sworn to before me, this 13th day of December A. D. 1902.

HARRY F. MILLER,
Notary Public.

34 THADDEUS MCCLAY MAHON, being first duly sworn, on oath, testified as follows:—

Mr. JOHN PAUL JONES:

Q. You will please state your name, age, and present occupation?
A. Thaddeus McClay Mahon.
Q. What if any, official position do you hold at the present time?
A. Member of Congress.
Q. From Pennsylvania?
A. Yes sir.
Q. Are you chairman of the Committee on War Claims?
A. Yes sir.
Q. Are you acquainted with S. P. Knutt, the plaintiff in this case?
A. Yes sir.
Q. How long have you known him?
A. I have probably known him since 1893 or 1894.
Q. Will you please state briefly what you know about the Knutt case, as it was commonly called, which was appropriated for in the act of May 27th, last, commonly called the omnibus bill.
A. I think it was in the fifty-fourth or fifty-fifth Congress Mr. Knutt called on me (I was then chairman of the War Claim Committee) about a direct appropriation for the claim known as the Knutt claim. I think it was a Louisiana or Mississippi claim. I do not know which. I told Mr. Knutt that the committee would not report any appropriations; that it was a Bowman Act case for stores and supplies, and he had better take his case to the Court of Claims.
Q. Did you advise him as to the best method of getting there?
A. Yes sir. I told him that the House was crowded with eighteen thousand bills, and that he had better go to the Senate, and have it referred by the Senate; that he would get it through much quicker.
Q. What transpired at the last session of Congress in this claim?
A. I of course lost sight of it. The last session of Congress Mr. Knutt called on me as to whether his claim would go in the omnibus bill, as reported to our committee. I told him it would not; that the House would only put in claims that the House had sent down, and which had been returned; that when the bill
35 went over to the Senate, the claims committee would put in their findings, and his was among them. I told him I did not examine his findings, but if they were in proper shape (that is the court findings) with the committee, if that bill passed, his claim would be with it.

Q. Was there any personal solicitation on the part of Mr. Knut with you or any members of your committee, with regard to this matter?

A. I just told you what happened between Mr. Knut and I. Of course it would not have been any assistance to me.

Q. Was there any personal solicitation with you or any other member of your committee, so far as you know with regard to the omnibus bill?

A. Not on the Bowman act. There were what we called miscellaneous cases, which were never before the court, and could not be referred under the Bowma- act. There was a great deal of trouble about these claims, but they did not come under the Bowman act.

Cross-examination.

By Mr. BAKER:

Q. When did you first become acquainted with Mr. Knutt?

A. I think pretty soon after I came in. I came in under the Fifty-third Congress.

Q. What year?

A. Ninety-four, I think.

Q. Where did you see Mr. Knutt?

A. He came to my committee room. He was not there often, after I had advised him about his claim.

Q. When did you see him, the last Congress?

A. When we were getting up the omnibus bill. He came to the committee room and asked if the bill as it came down from the court would be included in the bill. I told him it could not be in the House bill, but would be put in the Senate.

Q. And it was put in the Senate bill?

A. Yes sir.

Q. And the *G*ouse passed it without objection?

A. They passed it. Of course, you understand, the Senate committee put the bill in, the bill went to conference, and the
36 Bowman Act cases and a few Tucker Act cases went through.

Q. Will you state how Congress acts on findings of the Court of Claims, under the Bowman and Tucker acts.

A. The omnibus bill makes an appropriation, if they pass the court.

Q. Do you dispute any of the findings of the Court of Claims?

A. No sir. That is what the court was established for, to find the facts for us.

——— ———.

Sworn to and subscribed before me, this — day of Dedember A. D. 1902.

——— ———.

GEORGE W. Z. BLACK, being first duly sworn, testified as follows:—

Direct examination by Mr. JONES:

Q. State your name, age and present occupation.
A. Age fifty eight; lawyer.
Q. Where do you reside, Mr. Black.
A. My place of business is 1425 New York avenue.
Q. You practice law in this city?
A. Yes, in the Court of Claims.
Q. You will state what, if any, experience you have had in your professional practice in procuring what are known as Bowman act claims for stores and supplies, under the act of March 3, 1883.
A. I have devoted all my time for some twenty eight years to the prosecution of war claims, embracing stores and supplies.
Q. Are you familia*n* with the usual fees charged by the members of the bar of the Court of Clai*sm* in cases of this character.
A. I am.
37 Q. (Insert hypothetical question referred to in the deposition of Jackson H. Ralston.)

Mr. BAKER: I desire to note the same objection made to this question as made in the deposition of Mr. Ralston.

A. I would say in answer to the hypothetical question that a reasonable fee in such a case would be 50 % maximum and 33⅓ % minimum charge.

Cross examination by Mr. BAKER:

Q. Suppose it was known at the start that the Quartermaster's Department had made a finding in this case of eighty nine thousand dollars, or some sum near that amount, and that all of the findings and all of the dispute and all litigation on the part of the Government was over an amount which was not paid by Congress, and over an amount over and above the eighty nine thousand dollars, would you still maintain that the fees that you have stated are proper fees?
A. I would.
Q. In other words you would pay out of the eighty nine thousand dollars for litigation that never amounted to anything at all.
A. As I understand it, that is, I beg your pardon, rather infringing my answer. I do not want to argue the question with counsel, but I think you can get my views.
Q. My question is this, Mr. Black, that you suppose when this case started there was no dispute so far as the Government is concerned, or that t-ere was a finding of the Quartermaster's Department that that matter could have—easily adjusted either by the Court of Claims or by Congress, and there was in dispute an amount over and above that in the amount of one hundred and thirty thousand dollars, would you still maintain that 33⅓ % was a reasonabla fee

to recover, that which could have been recovered without any litigation at all?

Mr. JONES: I object to that upon the grounds that it is in itself a hypothetical question, based not only upon no evidence to support it, but upon an absolute misstatement of facts.

A. If counsel will hear me I will endeavor to answer that question. According to my knowledge the Knutt claim was a
38 claim which was known to the members of the bar as a claim upon which a settlement had been made, and the Court of Claims always shrinks from allowing a claim, where payments had been made. I had a client come to me today with a case similar to this, and for that reason I declined it. Based on my own experience with such claims, I considered the Knutt claim, at the time Mr. Knutt had it before the Court of Claims, as an absolutely hopeless case. I was amazed when I learned that — had secured a finding in his favor, and I considered it a great piece of skill.

Q. Why did you consider it a hopeless case?

A. Simply because I understood it had been adjudicated twice, two payments made on it, and Congress and the Court of Claims, both as a rule, shut their ears to a case where there have been payments made I have myself cases of $2000.00 in amount, where a payment of $5.00 has been made, and where unquestionably there should have been a finding for a larger amount, but the Court of Claims turns a deaf ear to such cases.

Q. Don't you know, Mr. Black, that the Quartermaster's Department adjudicated this claim at about two hundred and fifty six dollars?

A. I am not familiar with it. As I understood the Knutt claim, the amount fixed in the Quartermaster's Department was not fixed by the Quartermaster General, but by an investigating agent, whose recommendation is binding upon no one, but simply for the information of the Quartermaster General. I would not be sure about that.

Q. Do you know what the finding of the Court of Claims was in this case?

A. I do not remember the amount. I have seen it of course in the appropriation bill.

Q. Did the appropriation bill carry the full finding of the Court of Claims?

A. I could not say. It was a matter in which I had no interest, and did not follow it up.

Q. Where is your office?

A. 1425 New York avenue.

Q. You practice exclusively in the Court of Claims?

A. Yes sir.

39 Q. How long have you been practicing in that court?

A. I think about twelve years. Prior to that I prosecuted these cases before the quartermaster general.

Q. Do you practice before Congress or not?

A. I am sorry to say I do.

Q. You have heard that Mr. Ralston testified here, as to what he did before Congress?

A. I have heard his testimony, most of it, yes.

Q. Mr. Ralston testified that he was employed by Mr. Knutt to do certain work, after the finding of the Court of Claims, and that he was to receive a compensation of 7½%, and that the result of the work was to recover something less than half of the findings of the Court of Claims, and that one argument was made before the committee of Congress; what do you say as to the reasonableness of this fee?

Mr. JONES: I object to that. That fee is not in question.

A. It is a delicate question, and I prefer not to answer it.

Q. How long have you known Mr. K-utt?

A. I have known Mr. Knutt, I may say, ever since I have been practicing in the Court of Claims. I should say ten or twelve years, about that time.

Q. Is he a member of the bar of the Court of Claims?

A. I understand he is. I have seen him practicing before the Court of Claims for a number of years. I understood he was.

Q. Did you ever know him to have any other cases outside of these cases?

A. Hundreds of them. I found a good — of fault with him for having so many cases. He had six or seven hundred at one Congress. If you look at the docket you will find his name in hundreds of cases.

Q. Where is his office?

A. His office is in the Kellogg building on F street. Now I have not been there to see Mr. Knutt lately, that is where I always found him when I went to see him on business.

Q. How long ago was his office there?

A. I never knew him to have his office anywhere else. I have not seen him recently.

40 Q. What do you call recently?

A. Probably a couple of years. I have seen him there within ten years. I do not think I have known Mr. Knut more than ten or twelve years.

G. W. Z. BLACK.

Subscribed and sworn to before me, this 13th day of December, 1902.

HARRY F. MILLER,
Notary Public.

41 P. E. DYE, a witness produced and sworn, testified as follows:—

Direct examination by Mr. JOHN PAUL JONES:

Q. Please state your name, age and occupation.

A. P. E. Dye; attorney at law, office 514 Eleventh street, worthwest, Washington, D. C.; age 71 years.

Q. How long have you practiced your profession in this city?

A. Since 1870.

Q. Where has that practice largely been?

A. In the Court of Claims, though I have practised in the local courts, and am a member of the bar of all the coirts, and the Supreme Court of the United States.

Q. What, if any, experience have you had in the Court of Claims in the prosecution of cases under the act of March 3, 1883, commonly called the Bowman act.

A. I have had very considerable practise, indeed the most of my time since 1870 has been given to the prosecution of claims of this character, and ever since the passage of the Bowman act, I have been engaged in prosecuting claims, and am engaged in the matter at the present time.

Q. Are you familiar with the usual and customary fees of members of the bar of the Court of Claims in cases of this character?

A. I am.

Witness asked to answer hypothetical question in the said deposition of Jackson H. Ralston.

Same objection noted by Mr. Baker as made to the question in said deposition of Jackson H. Ralston.

A. Well I should say, as I understand the hupothetical question, which is, that the attorney pays all the expenses, a very reasonable fee would be fifty per cent. of the amount recovered.

Cross examination by Mr. BAKER:

Q. If the expenses were paid by someone else, then you would change your opinion about the amount of the fee.

42 A. I would change my opinion, certainly.

Q. How many cases have you had in the Court of Claims under the Bowman act?

A. It would be difficult for me, without looking at my docket, to answer that question, but hundreds. I have a large number now, quite a large number already pending in Congress for appropriation.

Q. Where is Mr. Knutt's office?

A. I could not tell you. I suppose he had an office on G street when he was in the city here, and I also supposed that he had an office in Natchez.

Mr. BAKER: I move to strike out his answer on the ground that I asked for a fact and not a supposition.

Q. You do know of your own knowledge whether or not he ha
an office in Washington?
A. I do not know about it.
Q. Do you know of your own knowledge whether or not he ha
had an office in the District of Columbia within the past ten year
A. I have met him on G street.

Re-direct examination by Mr. JONES:

Q. At whose office?
A. At the office of Mr. John Paul Jones and another gentleman
I do not know the name of that party. I supposed that it was hi
office when he was in the city.

Mr. BAKER: I object to so such of the answer as is supposition.

Q. Have you ever in the past few years wanted to see Mr. Knu
on business?
A. Yes sir.
Q. Where did you seek him?
A. I sought him on G street.
Q. At my office?
A. Yes.
Q. Don't you know that it was his office?
A. I supposed so.
43 Q. Did you ever know Mr. Knutt to have an office befor
that time, before the last few years?
A. I could not say about his office.
Q. Did you ever go to his office in the Kellogg building?
A. I do not remember that I did.

P. E. DYE.

Subscribed and sworn to before me, this 13th day of Decembe
A. D. 1902.

HARRY F. MILLER,
[L. n.] *Notary Public, D. C.*

At this point the hearing adjourned until 11 o'clock a. m. the 11t
of December A. D. 1902.

44 GEORGE A. KING, being first duly sworn, on oath, testifie
as follows:

Direct examination by Mr. J. P. JONES:

Q. Please state your name.
A. George A. King.
Q. Age.
A. Forty seven years; occupation attorney at law; residence
Washington, D. C.

Q. Where is your office?

A. 728 Seventeenth street.

Q. You practice your profession in this city?

A. Yes ever since I was twenty one years of age, and in fact before.

Q. You age a member of the bar of the District of Columbia and the Supreme Court of the United States?

Q. Yes. I am a member of the bar of the District and of the Supreme Court of the United States.

Q. Please state what, if any, experience you have had in the Court of Claims, in the prosecution of claims for stores and supplies under the act of March 3, 1883, commonly called the Bowman act.

A. I have been engaged in the prosecution of that class of claims ever since the passage of the Bowman act.

Q. Are you familiar with the fees usually charged by members of the bar of the Court of Claims in the prosecution of claims of this character?

A. I am.

Hypothetical question marked "A" and referred to in the deposition of Jackson H. Ralston to be inserted.

Same objection made by Mr. Baker as made in deposition of Jackson H. Ralston.

A. I should say in response to this question that a reasonable fee in such a case, in the absence of a special contract, would be about one third of the amount recovered.

Q. In cases of this character, what is the usual fee charged in your office?

45 A. Well where the client pays all the expenses, it is usually 33⅓%, but with a distince agreement that the claimant is to make his arrangements with his own local attorney for the taking of testimony, and that that is to be outside of our compensation. Where we agree to pay expenses, as we sometimes do, but not often, the fee is usually 50% or one half, sometimes forty or forty five per cent.

Q. Mr. King, have you any idea how many cases of this kind you have had in your office since the passage of the Bowman act?

A. That is pretty hard to say, but there have been hundreds of them, and possibly thousands, possibly several thousand.

Q. Do you know of your own personal knowledge whether Mr. Knutt is a member of the Court of Claims bar?

A. Yes I personally know that he is.

Q. Do you know whether he is a member of the Supreme Court of the United States?

A. Yes, I heard him argue a case orally before that court once.

Q. Do you know whether Mr. Knutt had or has now any other cases such as the one which is the subject of this suit?

A. I know that he had a number of such other cases, and I think that he still has some.

Q. Has he not an interest with you in a number of these cases?
A. Yes, that is true. He turned over some of his old cases, on fact the bulk of them for our management.
Q. Do you remember how many of these cases there were?
A. I do not know exactly, but I should say, on a very rough guess, that there were somewhere about a hundred of them. I may be considerably out in these figures.

Cross examination by Mr. BAKER:

Q. You say you are taking care of these cases now.
A. With the exception of some that he reserved.
Q. When did you commence to look after his cases, Mr. King?
A. I think that that arrangement was made about two years ago, but I could not be sure without refreshing my recollection from the agreement made with him.
Q. So that you prosecute these cases for him?
A. I did prosecute them. The bulk of these cases that I
46 took have not turned out favorably; but I believe that there are some in course of prosecution.
Q. Suppose you were informed that the work and labor done in the hypothetical question that has been put to you was not to recover the eighty-nine thousand dollars, as alleged therein, but was done in trying to recover one hundred and thirty thousand dollars, over and above the eighty-nine thousand, and that all of the labor, or nearly all of it was bestowed in the attempt to recover more than the amount claimed in the hypothetical question, would that in any way affect your opinion with regard to the contingent fee?
A. I cannot say that the fact that the attempt was to recover a larger sum than that allowed would affect my opinion as to the contingent fee. I should regard the fee as properly based on the amount actually recovered, even though the attempt was to recover a larger sum.
Q. Suppose the original claim was in the neighborhood of seven thousand dollars, and that the matter had been adjudicated in the quartermaster's department at two hundred and forty-six thousand dollars; and that the Court of Claims had allowed two hundred and twenty-four thousand dollars, and that Congress had appropriated eighty-nine thousand dollars, and that nearly all the labor spent in the case, if not all, was bestowed on trying to get more than Congress appropriated, would that affect your opinion as to the amount of the contingent fee?

Mr. JONES: I object to that on the ground that it is a hypothetical question, not only not based upon evidence that has been adduced in the case, but based upon absolute misstatements of fact.

A. Yes; if the case were as there stated, but the question stated a case which seems to me almost an impossible one, because I can hardly imagine a case where the attempt to obtain the amount

which actually was allowed, is separable from the attempt to obtain a larger amount, and in my experience I may say that these claims are not, since the Southern Claims Commission was abolished in 1880, in the nature of conceded claims, which are allowed without argument or effort.

47 Q. Where is Mr. Knutt's office at the present time?

A. Well, I do not know that he has any regular office of his own in this city at the present time.

Q. Has he got an office in any other city that you know of?

A. When he is not here I always address my letters to him at Natchez, Mississippi, but whether he has an office in that city or not, I am ignorant.

Q. When last did he have an office in the city of Washington, and wahere was that office?

A. He has not resided here for a number of years. Since that time I have met him, I think as recently as six or eight years ago in an office on G street, which was occupied by Mr. John Paul Jones, and which Mr. Knutt seemed to make his own office. I am not sure whether his name was not on the door or some part of the building. I do not think it was, but I know that I got the impression that he made that some sort of office of his own.

Re-direct examination.

By Mr. JONES:

Q. Are you familiar, Mr. King, with the Knutt case, so called, that was appropriated for by the act of May 27th last?

A. Not especially. I follow the general course of all litigation in the Court of Claims and all Court of Claims cases, that go to the Supreme Court, where they are of any importance, because my practice in the Court of Claims being extensive, I like to keep track of important cases as precedents. I know of the reported decision of the Court of Claims and of the Supreme Court in the Knutt case, but that is about all.

Q. From your knowledge of the Knutt case, based on the Supreme Court decision and otherwise, I will ask you whether or not the hypothetical question put to you by Mr. Baker applied to that case?

Mr. BAKER: I object to that question on the ground that the witness has testified that he has very little knowledge, other than in a general way, of the Knutt case, and he cannot say whether or not the question comes within the Knutt case.

A. From what I know of the Knutt case, which is based upon at leastt two reported decisions of the Court of Claims, published in its reports, and one decision of the Supreme Court, also regularly

48 reported, and from some of the reports in Congress which I have seen in print, as well as the bill which became the act of May

27th, 1902, the general course of which I followed in Congress, I do not think the hypothetical question asked me by Mr. Baker an accurate description of the Knutt case.

Mr. BAKER: I move to strike out his answer on the ground that all the statements made by the witness are upon hearsay written matter.

GEORGE A. KING.

Subscribed and sworn to before me this 13th day of December A. D. 1902.

[L. S.] HARRY F. MILLER,
Notary Public.

49 In the Chancery Court of Adams County, State of Mississippi.

S. PRENTISS KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL. } No. —.

I, Harry F. Miller, a notary public in and for the District of Columbia, hereby certify that at the time and place aforesaid, there personally appeared before me Jackson H. Ralston, George A. King, George W. Z. Black, P. E. Dye and Thaddeus McClay Mahon, witnesses on behalf of the complainant is the above entitled cause, who were each by me sworn, before any question was put to them, to tell the truth, the whole truth, and nothing but the truth, relative to said cause, and that the answers of said witnesses were taken down by Miss L. May Larkin, a stenographer and disinterested person, and accurately transcribed in my presence, and that the depositions of each of the parties above named were read over to and signed by them before me at the time and place aforesaid, excepting the deposition of Thaddeus McClay Mahon, who had left the city before his deposition had been transcribed by said stenographer.

In witness whereof I have hereunto set my hand and official seal this 13th day of December, 1902.

HARRY F. MILLER,
Notary Public.

50 And afterward towit: the following testimony was read in open court, which was in words and figures as follows, towit:

Met pursuant to adjournment on this the 11th day of December, 1902, and by consent adjourned to the office of Mr. John S. Blair, 1416 F street.

Present: Mr. John Paul Jones, solicitor for complainant, Mr. D. W. Baker, solicitor for defendants.

Mr. JOHN S. BLAIR appeared as a witness, and after being duly sworn, deposes as follows:

By Mr. JONES:

Q. Mr. Blair, please state your name, age and occupation.

A. John S. Blair, fifty four years of age; I am an attorney at law.

Q. Are you a member of all the courts of the District of Columbia, and the Supreme Court of the United States and the Court of Claims?

A. Yes.

Q. How long have you practiced law in the City of Washington?

A. I have been practising for myself since 1885, and for twelve years before that I was defending the United States in the Court of Claims.

Q. As an assistant attorney general?

A. As an attorney of the United States in the Department of Justice.

Q. During your official service in the Court of Claims, were you charged with the defense of what is called the Bowman Act cases, or cases under the act of March 3, 1883?

A. No I was only connected with two or three cases that came to the Court of Claims under the Bowman act, and in those I had nothing to do with the issues of facts.

Q. Mr. Blair, since you have been engaged in the practice of law in this District on your own account, has your practise been, or has it not been largely in the Court of Claims?

A. My practise is very largely in the Court of Claims, almost entirely.

51 Q. Are you familiar from your own personal experience and from your own knowledge of the sustom of the members of the bar with the court, with the general question of contingent fees? That is as to what contingent fees are usually charged?

A. I have had a good deal to do with contingent fees. They don't have any other kind scarcely in the Court of Claims. I have very little familiarity with the fees that other people have charged. I know the subject has come up frequently, and know what my views are on the subject.

Q. Do you know what is the usual customary fee charged by members of this bar in congressional cases, such as I have described in the Bowman Act cases?

A. I do know of a good many contracts being made for contingent fees in the Bowman cases, and I have made a good many myself.

This question marked "A" is the question referred to in Mr. Ralston's and other depositions, and asked each witness.

JOHN PAUL JONES,
For Complainant.
D. W. BAKER,
For Defendant.

Q. Suppose an act of Congress passed on the 7th day of August, 1882, had referred a claim for stores and supplies, taken and used by the Federal troops during the war of the rebellion, to the Quartermaster General for findings of fact and report to Congress, and that the firm of which you are a member were employed in the matter, and that individually you took charge of the case, and went from Washington to Mississippi and Louisiana, and took about a dozen depositions; that you digested all the testimony, prepared briefs and generally had charge of said case; that said claim amounted in the whole to about a million dollars, and that the Quartermaster General made a finding, showing about two hundred and fifty-six thousand dollars to be due, and that Congress paid thereon by appropriation of date July 5th, 1884, the sum of thirty-five thousand dollars, and that thereafter considering that the claim had not been paid in full, you determine to continue its prosecution, and that your firm having dissolved partnership,
52 and you having acquired sole control of said case under the terms of the dissolution, with the full consent, knowledge of and approbation of your client, brought suit in the Court of Claims upon the award aforesaid of the quartermaster general on an account stated and alleging that the payment thereon was a part payment, and you having employed eminent counsel, whose compensation was to the decision had been rendered against your client, you appealed come out of your fee, assisted in the preparation of said cause, and after the same to the Supreme Court of the United States, where the judgment of the lower court was affirmed; and that thereafter still determined to further prosecute said cause, you prepared a petition to Congress, in accordance with which the Committee on War Claims of that body, did on the 16th day of February, 1887, refer the said cause to the said Court of Claims, under the provisions of the act of March 3, 1883, and that proceedings were had in said cause, extending from March 4th, 1887, to January 19th, 1891, when the findings of the said court were certified to the Committee on War Claims as provided in said act, and that during this period you had made a trip to Mississippi for the purpose of taking testimony, and that you had taken and filed a large number of new depositions, and that said suit was ably defended by the Attorney General, and was met by pleas in bar, and motion to dismiss for want of jurisdiction, and various other defenses on the law and merits, and that it was argued and re-argued, and several briefs written and printed upon the various questions of law and fact raised, as will more specifically appear from a certified copy of the docket entries of said cause, herewith handed you for examination. And that the findings of fact as made by the Court of Claims on the 9th day of January, 1891, were bitterly attacked on the floor of the House of Representatives in 1895, when a bill was under consideration providing for the payment of this and similar cases, and that in said attack many statements were made so affecting this case in its merits, that it became, in your opinion, necessary to have a re-reference to the

Court of Claims in order that the effect of this attack might be
53 overcomes by more fully establishing and demonstrating by judicial proceedings in that court the falsity of said attack, and you petitioned the Congress of the United States, and the Senate did by resolution of date February 20th, 1895, refer the said cause again to the Court of Claims, for re-investigation and re-finding of fact; and that from the 21st day of February, 1895, until the 9th day of December 1899, you were engaged in the further prosecution of this cause and its re-investigation, and during said time you again made a trip from Washington to Mississippi and took much additional testimony in said cause, and that various defenses on the law and merit were again made by the counsel for the Government, as appears from the certified copy of the docket entries in said cause, which is herewith handed you for examination, and after the findings made in said cause, on the 9th day of December, 1899, you appeared personally and with associate counsel, whom you had retained, before the Committed on Claims of the Senate, and the Committee on War Claims of the House of Representatives, and made such legal argument before those bodies as convinced them that the adverse decision of the Supreme Court of the United Slates, above referred to, and the attack made upon said claim upon the floor of the House in 1895, did not constitute a valid, equitable defense to said cause as finally reported from the Court of Claims, and that the said committed thereupon agreed to and did insert an appropriation in the sum of eighty nine thousand nine hundred and ninety nine dollars and eighty-eight cents, in the bill then pending in Congress, sommonly called the omnibus bill, which was approved and became a law on the 27th day of May, 1902; and that during the long and tedious progress of said cause you had employed associate counsel and had agreed to pay them out of your fees in said cause, a sum equal to twelve and one half per cent. of the gross amount recovered; and that during the entire period during which you were connected with said cause, commencing with the year 1882 and ending after the appropriation in May 1902, to-wit: for a period of twenty years, your client had been unable to pay any of the expenses whatever incident to the prosecution of said cause, and you had
from your own resources advanced money to your client to
54 cover expenses of printing, costs of court, commissioner's fees for taking testimony, witnesses' fees, and their incidental expenses of travel etc., and many other expenses necessarily incidental to the continuous prosecution of the claim, in all amounting to something like two thousand dollars, which said amount you could never have recovered had said claim not been finally paid; what in your opinion would be a fair and reasonable compensation for such services, based upon a per centage of the gross amount recovered, it being understood between you and your client that your compensation and reimbursement should be entirely contingent upon success?

(Question objected to by Mr. Baker on the ground that the witness has not proved himself competent to testify, and from his evidence it would appear that he only knows about his own contingent fees, and for the further reason that the facts alleged in the hypothetical question are not the facts of this case, nor as yet have any facts been offered in evidence upon which to base the statements contained in the hypothetical question, and therefore, the answer to the question would have nothing whatever to do with the issue involved in this case.)

A. It seems to me that, considering the length of time that the party is alleged in this question to have given to this case, that forty per cent (40%) would not be an excess of compensation, and I might as well say here, Mr. Baker, because you will want to know, that the absolute uncertainty of what Congress will do with your work after you get it through the Court of Claims, is a very large element in determining what should be a reasonable compensation.

By Mr. BAKER:

Q. In answering the hypothetical question you have taken into consideration all the facts set up in the question?

A. Yes, I read the question over two or three times, and think I have based my answers upon the question set out there. The question was submitted to me yesterday, and I have read it over carefully prior to the prop-unding of the question by the commissioner.

55 Q. Suppose you were informed that all the proceedings taken in the Court of Claims that are set — in this question, were paid for, and that the only claim that could be set up in this question would be for work done after the decision of the Court of Claims before Congress, what would you say was the value of that work?

(Question objected to by Mr. John Paul Jones on the ground that there is no question involved in this case as to the value of services rendered before Congress.)

A. My answer is that I do not think I can answer that question with satisfaction to myself without having it submitted to me in writing, and be permitted to lay it alongside this written question which I have in my hand. If the compensation of Mr. A., or whoever it is, in this question propounded, has been partly by case and partly the hopes of reward at the time of payment, I would want to know just what services set out in the hypothetical question have been paid for, and which ones remained to be paid for.

Q. Suppose all the services alleged to have been rendered in this hypothetical question, down to these words in the hypothetical question, "and that the findings of fact as made by the Court of Claims on the 9th day of January 1891," had been settled for and paid, what in your opinion would be the services for the work done

as set out in that question. To explain my question, I might say to you, Mr. Blair, that my position is, that if everything that was necessary to be done in the Court of Claims, was done and paid for, and the only services to be paid for, were what was done before Congress, after the finding of certain facts by the Court of Claims, what, in your opinion, would these services before Congress be worth?

Question objected to by Mr. John Paul Jones on the ground that this is not a suit for services rendered before Congress, and is entirely irrelevant, and has no bearing on the issue.

A. It appears, Mr. Baker, that after the 9th day of January, 1901, there was a re-reference of the case by the Senate to the Court of Claims, and that the case was pending under this new reference before the Court of Claims for four years.

56 Q. Then Mr. Blair, I will change my question, and will ask you what will be the worth of the services set out in the hypothetical question, if he had received payment for all work done by him in the Court of Claims. Of course for work done before Congress, for purely professional services and not for lobbying.

A. Mr. Baker, there are allusions here to the fact that he has made a sub-contract for associate counsel, in the hypothetical case which you are presenting to me, has that associate counsel been paid also for his services.

Q. No. I ask you for the value of the services for the particular work on the *quantum meruit* without any regard to who performed the services.

A. Is the element of uncertainty also in that question of yours?

Q. Yes, as far as the question of the payment of the findings in the Court of Claims is uncertain in Congress.

A. It is not easy for me to measure the value of purely professional services performed before committees.

Q. Suppose you were informed that the only professional service done before the committee in Congress in this case was the appearance before the Senate committee or sub committee twice, and arguments made of the length of about four or five or six hours. What would be a reasonable compensation for such labor?

A. Well that is pretty hard to answer Mr. Baker would you mind preparing that question in writing, just what you want to know, because you have eliminated from this hypothetical question some of the dates and some of the facts, and if I could have your question in totality, I would rather have it.

Mr. BAKER: Mr. Knutt and myself will prepare a question and will have it here by 2 o'clock.

Q. How long have you known Sargent Prentiss Knutt, Esq.?
A. Fifteen or twenty years.
Q. What is his business?
A. Practising law.
Q. Where is his office?

A. I don't know.

57 Q. How often have you seen him in the last ten years?

A. I don't know. I think I have seen him a great many times, but can't tell you just how many.

Q. Did you ever see him in his office.

A. I think not. I have seen him in my own office.

By Mr. JONES:

Q. Mr. Blair, did you ever see Mr. Knutt in any of the courts?

A. I have seen him in the Court of Claims frequently.

Q. When?

A. When the court was in session.

Q. How long ago, Mr. Blair?

A. I have not seen Mr. Knutt in Court inside of eighteen months. This is about as definite as I can be.

NOTE—The value of the legitimate congressional work performed by Mr. Knutt, necessary to obtain the appropriation would depend entirely upon the nature of the findings of the Court of Claims, because in the Bowman cases and Tucker cases, the court finds the facts as they are, and reports no conclusions of law and makes no recommendation. The amount of legitimate work necessary in Congress to obtain an appropriation would depend on the nature of the findings.

Mr. BAKER: Can you, upon reading the original hypothetical question, and considering therein the work that was done after the findings of the Court of Claims, determine what, in your opinion, would be a reasonable compensation, of the findings of the Court of Claims show the liability of the Government?

A. I cannot answer the question unless it is written out and I am allowed to read it. I cannot answer the question if it is put to me orally.

Q. I will ask you now if you have examined the findings of the Court of Claims in the Knutt case.

A. I have examined the findings in the Knutt case in the document called Senate document No. 26, 56th Congress, first session, James C. Williams, administrator.

58 (Offered as an exhibit and marked Exhibit "A.")

Q. Having examined the findings in the Knutt case can you give an answer now to written question No. 1, which is as follows: "Suppose in the hypothetical question put to you it was shown that the several findings mentioned in the hypothetical question were made by the Court of Claims, when another person other than Mr. Knutt was attorney in the case, and that such other person had been fully satisfied and paid for his work by giving him a per centage of two former appropriations, and suppose the only work performed by Mr. Knutt was such legitimate congressional work as was necessary to obtain the appropriation, the work performed by

him being set out in his hypothetical *wuestion*; what, in your opinion, would be a reasonable compensation for such legitimate work done before Congress in the manner set up in his hypothetical question?"

A. I think that Mr. Knutt's compensation for such legitimate congressional work as was necessary to obtain the appropriation on these findings was worth twenty per cent (20%) of the amount recovered

Q. Now, take written question No. 2, which is as follows: "Suppose you are informed that the only legitimate congressional work done after the findings of the Court of Claims, was two arguments, one by Mr. Knutt and the other by Mr. Ralston, before the Senate Committee on War Claims, which arguments occurred in two several days, and lasted from four to six hours, and that besides such arguments, Mr. Knutt himself went on one or two occasions to the House committee; what in your opinion, would be the value of the services so rendered—and embodying into that question the findings as we have them here in the Knutt case—what would be your answer to that question?

A. If those were the only services performed by him and no legitimate professional work were performed by anyone else, so that the work mentioned in that question was all the legitimate professional work that was necessary to obtain the appropriation on the findings, my answer would be the same as before—twenty per cent (20%).

Q. You say Mr. Blair, that merely to appear before a com-
59 mittee in Congress on *wto* occasions and make an argument, say each time of two hours length, would be worth twenty per cent (20%) of the appropriation made?

A. I do not regard the length of the argument as of much value in determining the price to be paid for it; it is the length of time that is spent in preparing and acquiring the information and the ability to make it. If Mr. Knutt's services in making these two arguments had been paid for at the time on a cash basis, and he had no responsibility in the matter, beyond the mere presentation of the argument, his compensation would be measured, in my judgment, by an entirely different standard. But if his compensation was contingent, the argument was made in discharge of responsibilities that he had assumed, if the value of his argument is to be measured by the results to his clients, and not merely measured by the time consumed in the presentation of the case, I think that the twenty per cent. (20%) that I have fixed would be fair and reasonable compensation.

JOHN S. BLAIR.

HARVEY T. WINFIELD,
Notary Public.

60 In the Chancery Court of Adams County, State of Mississippi.

S. PRENTISS KNUTT
vs.
JOHN K. NUTT, Adm'r, ET AL. } No. —. In Chancery.

I, Harvey T. Winfield, a notary public in and for the District of Columbia, hereby certify that — the time and place aforesaid, there personally appeared before me, John S. Blair, a witness on behalf of the complainant, in the above entitled cause, who was by me sworn before any question was put to him, to tell the truth, the whole truth and nothing but the truth, relative to said cause, and that the answer of said witness was taken down by Mrs. S. W. Day, a stenographer and disinterested person, and accurately transcribed in my presence, and that the deposition of each of the parties above named was read over to and signed by them before me at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal this 12th day of December 1902.

HARVEY T. WINFIELD,
Notary Public.

Commission expires Nov. 19, 1905.

By consent this deposition is to be delivered to the clerk of the chancery court by Mr. John Paul Jones.

D. W. BAKER,
For Defendant.

61 And afterwards towit, at the -earing, the following oral testimony was filed, which is in words and figures as follows:

S. PRENTISS KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL. } # 1726.

The answer of the respondent to the petition of S. Prentiss Knut shall be taken as denying any right of recovery by said petitioner upon *quantum meruit.*

Mr. S. PRENTISS KNUT, being sworn, testified as follows:—

Q. Mr. Knut, please state your name.
A. S. Prentiss Knut.
Q. Your age.
A. Forty seven years of age.
Q. Where do you reside?
A. While my residence is Natchez, my office is in Washington city.
Q. What is your profession?

A. I am an attorney at law; a member of the bar.
Q. Where do you practice your profession?
A. Principally in Washington city.
Q. Are you a member of the bar of Washington city?
A. I am. Of the supreme court of the District of Columbia.
Q. Are you a member of the bar of Natchez, Miss.?
A. I was admitted to the bar of this court in 1878.
Q. How long have you been in Washington engaged in the practice of your profession?
A. Immediately after admission to the bar I went to Washington and became associated with James W. Denver.
Q. When was that?
A. In the fall of 1878, and I have been practicing there ever since.
Q. When did you first become interested, not as an heir of Haller Nutt, but in the capacity of an attorney for the executrix of Haller Nutt in the prosecution of the claim which is the subject matter of this suit?
62 A. That commenced in the summer of 1882.
Q. Please look at the paper which I hand you. Do you recognize it?
A. I do.
Q. By whom is it signed?
A. James W. Denver, in the handwriting of James W. Denver.
Q. Are you familiar with the handwriting of James W. Denver?
A. I am familiar with it. At the time I was partner of Jas. W. Denver, and subsequently to the date of that paper.

(Paper here offered by counsel for petitioner. Respondents counsel object to the introduction of the paper on the ground of irrelevancy and incompetency. Ex. 1.)

Q. Mr. Knut, that was, as I understand, prior to the date of the formation of your general partnership with Gen'l Denver?
A. Yes sir.
Q. When was that partnership entirely entered into?
A. Upon my return to Washington from taking testimony; immediately after the giving to me of the paper just put in evidence there was a partnership agreed upon between us conditioned that I should further continue in the prosecution of this claim. In the summer of either 1885 or 1886 Gen'l Denver and I became full partners in all the business of his office.
Q. Will you look at the paper I hand you? In whose handwriting is it?
A. The body of the paper is in the handwriting of Arthur St. Clair Denver, the first signature is in the handwriting of Julia A. Nutt.
Q. Julia A. Nutt was your mother?
A. She was.
Q. And the executrix in this case?
A. The executrix.
Q. Who was A. St. Clair Denver?

A. He was the brother of James W. Denver, and had been for many years occupying a desk in his office.

Q. He was a clerk of Gen'l Denver?

A. Yes, he did a great deal of Gen'l Denver's office work.

63 Q. I will ask the witness to read the portion of the paper which I hand him which is marked in red.

Counsel for respondents objects; same objection as made to the preceeding paper offered by petitioner.

Witness reads the paper and it is marked Exhibit "2."

Q. Were you an associate when it was made?

A. I was present.

Q. It was understood that the claim should be further prosecuted, and that appropriation did not operate as a settlement of that claim.

A. Certainly.

Q. What is the paper I hand you?

A. This paper is a letter addressed by J. W. Denver to Julia A. Nutt.

Q. Of date when?

A. Dated Washington, February 2nd, 1887.

Letter offered in evidence to which the same objection is made. Paper filed and marked Exhibit 3.

Q. Please look at the paper I hand you and state what it is.

A. It is another letter from the same party to the same.

Q. Dated when?

A. Of date March 21st, 1887.

Paper offered in evidence. Respondents object, same objection. Paper filed and marked Exhibit 4.

Q. I will ask you where you got those letters, how they came into your possession.

A. I got those letters from among my mother's papers after her death.

Q. Look at this paper; by whom is it signed?

A. The paper you hand me is signed by Julia A. Nutt, the executrix.

Q. And what does it purport to be?

If the court please, some of our matters of evidence are original court papers, which have been filed and are part of the rec-

64 ords of the Court of Claims, and as such it is not possible they can be filed in this case. They are not offered for the purpose of establishing any facts which appear from the contents of those papers, with the exception possibly of this paper, but they will be offered in evidence simply for the purpose of establishing the fact that Mr. Knut was the attorney of record, and that he performed certain labors incident to his employment, and I take it that in

being introduced for that purpose, and not for the purpose of establishing any future rights in this claim, it will not be necessary that they be made a part of this case. There is not in the record now a certified copy of that instrument, certified to by the clerk of the Court of Claims.

It was agreed between counsel that the certified copy of the power of attorney filed in the original bill was a true copy of the paper offered in evidence by the plaintiff's counsel, and that a certified copy should be accepted in lieu of the original.

Q. Please read the endorsements made on that instrument.
A. (Witness reads same.)
Q. Please examine the paper I hand you now, and state what it is.
A. This paper is the original agreement between James W. Denver and Julia A. Nutt, of date May 18th, 1874.
Q. An agreement for what?
A. An agreement for fees for the prosecution of her claim.

Paper offered in evidence. Objected to. Filed and marked Exhibit #5.

Q. Mr. Knut, please look at the paper I hand you and state by whom it is signed and what it purports to be.
A. This paper is the dissolution of partnership agreement of Jas. W. Denver and myself, signed by Jas. W. Denver and S. Prentiss Knut, Washington, D. C., March 19th 1887.

Offered in evidence. Objected to. Filed and marked Exhibit #6.

Q. Look at the paper I hand you and identify it.

65 A. This paper is a latter from my mother to myself, dated Longwood, Jan'y 8th, 1891.

Offered in evidence. Objected to. Same objection.

Q. What was the dispatch to which your mother referred?
A. The dispatch referred to was one conveying to her the intelligence that the Court of Claims had made a finding of fact in the claim.

Filed and marked Exhibit 7.

Q. Look at this paper. What is it?
A. This is a similar paper to the last. A letter from my mother to me.
Q. What is the date?
A. Dated June 24th, 1892.

Offered in evidence to which counsel for respondents make the same objection. Paper filed and marked Exhibit 8.

Q. Examine this paper and identify it.
A. This paper like the rest is a letter from my mother to me, dated Longwood, Feb'y 14th, 1893.

Offered in evidence. Objected to, same objection. Filed and marked Exhibit 9.

Q. Please look at that paper and identify it.

A. This letter is similar to the former ones, from my mother to me, dated Longwood, June 27th, 1893.

Offered in evidence, to which offering counsel for respondents make the same objection. Filed and marked Exhibit 10.

Q. Who is the Mr. Morris referred to in that letter?

A. This is Hon. Martin F. Morris; he was appointed a judge of the Court of Appeals of the D. C. by President Cleveland, and he is now still on the bench.

Q. Did you ever have him employed in the case?

A. I did.

66 Q. Identify the paper which I hand you?

A. This paper is a letter addressed by my brother Calvin R. Nutt, one of the respondents in this suit, to me, dated July 15th, 1897, at Frederick, Md.

Paper offered in evidence; respondents object on same grounds. Filed and marked Exhibit 11.

Q. At that time where was what is known as the Knut case then pending?

A. In the Court of Claims.

Q. Was it possible for the Nutt claim to have been paid at the winter of 1897 and 1898?

A. Of course Congress could do anything, but the case pending in the Court of Claims under reference by the Senate, it would be most impracticable and out of all precedent.

Q. Look at that letter and identify it.

A. This is a letter addressed to me by J. C. Williams, the administrator of Haller Nutt, deceased, dated Jan. 26th, 1900.

Q. Before asking you to read the latter I will ask you when your mother Julia A. Nutt died?

A. She died in February 1897.

Q. Who succeeded her as administrator *d. b. n.* of the estate of Haller Nutt?

A. J. C. Williams, a citizen of Adams county, Miss.

Q. Will you read that letter to the court, such part of it as is marked.

Objected to. Same objection.

Q. What claim is referred to there?

A. The claim of the estate of Haller Nutt, which is the subject matter of this suit.

Filed and marked Exhibit 12.

Q. There is another letter I will ask you to identify.

A. This paper is another letter from the same Mr. Williams, dated Nov. 28th, 1900, and addressed to me.

67 Offered in evidence; objected to; same objection. Filed and marked Exhibit 13.

Q. Look at that paper.
A. This paper is another letter from Mr. Williams to me, dated Dec. 20th, 1900.

Offered in evidence; objected to; same objection; filed and marked Exhibit 14.

Q. That paper which I hand you is what?
A. Another letter from Mr. Williams to me, dated Feb. 11, 1901.

Offered in evidence; objected to on the same grounds. Filed and marked Exhibit 15.

Q. Who is the Reverend therein referred to?
A. One Geo. J. Mortimer, of Crystal Springs, Miss.
Q. What is this paper I hand you?
A. Another letter from Mr. Williams to me, dated March 11th, 1901.

Offered in evidence; objected to; filed and marked Exhibit 16.

Q. When Mr. Williams speaks of "our case" to what did he refer, as you understand?
A. The claim of Haller Nutt against the United States.
Q. Please identify that paper and read its contents?
A. This is another letter from Mr. Williams to me, dated April 29th, 1901.

Offered in evidence; objected to; same objection; filed and marked Exhibit 17.

Q. Please look at the paper which I hand you and state what it is.
A. The paper which you hand me is a carbon copy of a letter addressed by me to Mr. J. C. Williams, the administrator of the estate of Haller Nutt, dated Longwood, April 20th 1901, in reply to the foregoing.

68 Offered in evidence; objected to on the same grounds and also because it is an incomplete document. Objection sustained.

Q. Mr. Knut, I will ask you whether or not you replied to the letter to Mr. Williams of date April 29th?
A. I did.
Q. Do you remember in substance what you said to him?

Objected to. Objection overruled and exception reserved.

A. The substance of my reply to Mr. Williams was that he was an officer of this court, and that in considering the question of em-

ploying another attorney in my place he ought to consider the interest of a majority of the beneficiaries of the estate, and I claimed that he did not represent the majority, and if he persisted in his course, and did succeed, he would do the claim such injury that I did not believe it would ever be paid, and did he persist in the course after the warning, I would go into the court and ask for his removal as administrator on the ground that his course would damage the estate, and I would ask for an injunction to stop him from employing any other attorney in the claim.

Q. Now Mr. Knut, in reference to the last letter which I hand you, please state what it is and explain its contents

A. This is another letter from Mr. Williams to me, dated May 4, 1901.

Offered in evidence; objected to; same objection.
Filed and marked Exhibit 18.

Q. Did you reply to that letter?

A. Yes.

Q. In substance how?

A. That his reply left no other course for me to pursue but that outlined in my former letter, and hoped that he would take nothing in the matter as personal to himself, and asked him to leave the matter entirely *in statu quo* until he heard from the court, and I asked him further to explain his reference to Calvin, and on the next day I wrote him again and asked him to express his reasosn for violating my contract.

Q. Please identify this letter.

69 A. This is a letter from Mr. Williams to me dated July 19th, 1901.

Offered in evidence; objected to, same objection. Filed and marked Exhibit 19.

Q. Did you reply to that letter?

A. To that letter I made the following reply, dated Natchez, Miss., July 19th, 1901. (Reads letter.)

Letter offered in evidence, to which counsel for respondents objects on the same grounds. Filed and marked Exhibit 20.

Q. Please look at the paper which I hand you, and identify it and read its contents to the court.

A. The paper which you hand me is my copy of a letter written by me to my brother John, dated Natchez, Miss., July 26th, 1901.

Offered in evidence; objected to; same objection; filed and marked Exhibit 21.

Q. Please look at that paper, identify it and read it.

A. This is my copy of a letter to my brother John, dated Natchez, Miss., July 26th, 1901.

Offered in evidence; objected to and filed and marked Exhibit 22.

Q. Please look at and identify this paper.
A. It is a letter written by my brother John to me, dated Leota, Miss., Sept. 29th, 1901.

Offered in evidence, to which respondents object. Filed and marked Exhibit 23.

Q. Please look at this letter, identify it and read it.
A. This is another letter from my brother John to me, dated Leota, Miss., March 2nd, 1902.

Offered in evidence; objected to, filed and marked Exhibit 24.

Q. On what date was Mr. John Nutt appointed administrator *d. b. n.* of the estate of Haller Nutt?
70 A. October 5th, 1901.
Q. The letter you have just read was written subsequently to that date?
A. Yes.
Q. Please look at this letter and identify it.
A. This is another letter from my brother John to me, dated Leota Miss., April 26, 1902.

Offered in evidence to which the same objection is made. Filed and marked Exhibit 25.

We introduced in evidence the record prepared by the secretary of the Senate giving the journal entries presented to the Senate in connection with this case and give as exhibit certain entries, various bills, reports, etc.

Objected to on the ground of irrelevancy, incompetency, and not because of the absence of the seal of the secretary of the Senate.

We offer the same under the certificate of the clerk of the House of Representatives, that is duly sealed.

Objected to, same objection.

Q. Mr. Knut, it is in evidence that you entered into an agreement with Mr. Denver in 1882 to assist in taking testimony in this case. What, if anything, had you done in connection with what is known as the Nutt case, prior to August 1882?

A. I had familiarized myself with this claim while a student at the university of Virginia.

Objected to. Objection sustained, and exception reserved.

Q. Mr. Knut will you please look at the paper which I hand you, state in whose handwriting it is and what it purports to be.

A. This paper is in the handwriting of my mother, and is a petition to Congress in reference to the payment of this claim.

Question withdrawn.

Q. Were you acquainted with James A. Ekin?

A. I was.

71 Q. Will you state who he was and the nature of your acquaintance with him.

A. Gen'l Ekin I met here in Natchez, first in the summer of 1882, he came as a representative of the Government accompanied by his secretary, for the purpose of examining the claims under consideration under the special act of Congress. He was Assistant Quartermaster General of the United States Army at Jeffersonville, Ind. His duties were in chief to examine into and adjust the claims of loyal citizens for stores and supplies taken from them during the late war in the States of Kentucky and Tennessee, under the act of Congress of July 2*th*, 1864.

Q. How came he to have the Nutt case, which was a case arising in Mississippi, in his charge?

A. August 5th, 1882, Congress passed an act referring the Nutt claim to the Quartermaster General to examine and adjust and report the facts to Congress, and this claim was sent to Gen. Ekin to examine and report thereon.

Q. Mr. Knut, please look at that letter and return it to me when you have identified.

A. Written by me, dated Natchez, Miss., addressed Jas. A. Ekin, Jeffersonville, Ind., October 4th, 1882. This letter enclosed the list of items of claims for the consideration of the Quartermaster General.

Q. Otherwise the petition was the basis, you might say, of the claim?

A. Yes.

Q. In whose handwriting is that itemized statement?

A. In mine.

Q. Was that and the accompanying paper one of the necessary steps in the prosecution of the claim under the act of 1882?

A. Yes, it was the foundation, the basis, upon which the claim stood.

Q. Please look at this paper, state what it is and in whose handwriting.

A. One of the official papers of the Court of Claims, as was also the letter handed me abo*be*, as well as the statement referred to there. This paper is a letter addressed by me to Gen'l Ekin of seven pages of legal cap, a brief of the items of the claim.

72 Q. Were any depositions taken in August 1882?

A. Yes, depositions were taken by Gen'l Ekin and myself in Natchez, Miss.

I will introduce in evidence a printed document of the Court of Claims, 1851, Cong.

Q. Mr. Knut, in the document introduced in evidence it appears that the deposition of R. Holmes was taken 28th of September 1882, at Natchez, Miss. and that Col. J. A. Ekin, Assistant Quartermaster

U. S. Army, represented the Government; who represented claimant, Mrs. Julia A. Nutt, executrix etc. in taking that deposition.

A. I did.

Q. The deposition of Stephen Hargrove follows, I will ask who represented the claimant in taking that deposition?

A. I did.

Q. There is also the deposition of Jas. Shed Smith, taken September 29th, 1882, at Winter Quarters plantation, who represented the claimant in that?

A. I did.

Q. There is the testimony of Jamison, who represented the claimant in taking that deposition?

A. I did.

Q. Where is Winter Quarters plantation?

A. Winter Quarters plantation is situated in Tensas parish, La., and is the plantation from which most of this property was taken by the United States Army.

Q. To whom did it belong.

A. To my father in 1863; it is about 60 miles from here.

Q. There appears also the deposition of Moses Carter taken at the same place, who took that deposition?

A. I did.

Q. And what have you to say in regard to the deposition of Madison Prior, taken at the same place?

A. I represented the claimant at the taking of that deposition.

Q. The deposition of Shelby Smith, taken at the same place and same time, who represented the claimant at the taking of that?

A. I did.

73 Q. What as to the taking of the deposition of Louisa Montgomery, taken at the same place and the same time?

A. I represented the claimant.

Q. How as to Jas. M. Gillespie, taken at the same time and place.

A. I represented the claimant at the taking of that deposition.

Q. I find the deposition of G. W. Williams, taken at St. Joseph, on the 29th of September, 1882, who represented the claimants at the taking of that?

A. I did.

Q. We come back to Natchez, here is the deposition of Mary Jane Williams. Did you appear for the claimant in that?

A. I did.

Q. How about the deposition of Bryan Williams, taken at Natchez?

A. I represented the claimant.

Q. What as to Chas. Duffin, taken at the same time?

A. I represented the claimant.

Q. Now Mr. Knut, I find an affidavit very long and apparently very full, signed by Reed Gaskin, sworn to on the 12th of September, 1882, what about that?

A. I prepared it.

Q. Who took the deposition of R. F. Learned, September 30th, 1882.

A. I did. I represented the claimant.

Q. Your mother, Julia A. Nutt, appears as a witness according to this record and testified in 1882, who represented her at that time and at that hearing?

A. I represented her as attorney.

Q. I ask you to read from her deposition the last question and answer.

A. "Question by E. 'You authorize your son S. Prentiss Knut to act as your attorney in this investigation?' Answer. Yes, sir."

Q. By whom were these witnesses called, if you know?

A. All called on behalf of the claimant.

Q. Does this document from which I have been questioning you contain all the record that was made in the Quartermaster General's office under the reference made by the act of 1882?

74 A. Not all. Gen. Ekin obtained some *ex parte* testimony which was forwarded to Washington, and was the occasion of our appearing before the Quartermaster General and in making agreements on the subject. The record of the case in the Southern Claim Commission, together with the evidence before that commission was considered by the Quartermaster General so far as it related to the items that made up the claim.

Q. The affidavits which were taken by Gen. Ekin in this case are not a part of this?

A. They are embraced in the report which is printed in Ex. Doc. No. 53, 47 Congress, 2nd session, House of Representatives.

Q. What was the result of the investigation of the Quartermaster General upon the evidence obtained by Gen'l Ekin?

Motion made to exclude all evidence as to the depositions taken by Mr. Knut in the States of Louisiana and Mississippi in 1882, for the reason that he was not the representative of the executrix and had no contract with her for the service that he was performing, but that the contract under which he was working was with Gen'l Jas. Denver.

The court sustained the objection. Exception reserved.

I now offer to introduce a brief prepared by Mr. Knut, and in the handwriting of Mr. Knut, filed before the Committee on War Claims of the House of Representatives on Jan'y 30th, 1883.

The same objection is made to this paper as was made to the introduction of the preceeding one. Objection sustained and exception reserved.

I now offer to introduce petition signed by Julia A. Nutt, drawn by S. Prentiss Knut, to the Congress of the United States, Nov. 21st, 1883.

Objected to on the same grounds; objection sustained and exception reserved.

I now offer to introduce a paper entitled a statement of
75 Mrs. Julia A. Nutt, widow and executrix of Haller Nutt, setting forth in detail the law and the facts in her claim, of date Nov. 21st, 1883.

Objected to; same objection. Objection sustained and exception reserved.

Q. Mr. Knut, what was the result of the investigation of the Quartermaster General under the act of 1882.

A. The Quartermaster General reported his findings, made report to Congress Jan. 11th, 1883, which report is set out in the Ex. Doc. herein referred to.

Q. What amount did he find to be due the estate?

A. The Q. M. G. recommended the payment to the claimant of $256,884.05.

Q. What amount was appropriated by Congress in settlement of that finding and when?

A. July 4th, 1884, an act of Congress was passed appropriating $35,556.17 to pay the claimant in settlement of this claim.

Q. Mr. Knut, when did you become associated with Gen. Denver generally in the practice of law?

A. From the time I first entered his office we frequently had cases together; that is cases pending in his office and were turned over to me for a share of the fee. I would work them up and take charge of the work to be done on them. We had a great many cases together and put through a number prior to our general partnership.

Q. What was the date of your general partnership?

A. We formed a general partnership in June 1885.

Q. Please look at that paper and state what it is and in whose hand writing?

A. The paper you hand me is in my handwriting as to the body thereof; it is signed by Julia A. Nutt, widow and executrix of Haller Nutt deceased; it is a petition to Congress, covering five and a half pages of legal cap setting forth the status of the claim and asking further redress; it is dated Nov. 1885, and was prepared by me, sent to the claimant, who signed and returned the same, and was by me presented to Congress.

76 Printed copy of foregoing offered in evidence and marked Exhibit 27.

Q. When was the payment made of $35,556.17?

A. It was appropriated by the act of July 5th, 1884.

Q. When was the payment made?

A. That was paid the claimant July 19th, 1884.

Q. So that the petition to which you have just referred relates to an additional claim than that already paid?

A. Yes.

Q. What was done with the claim by Congress?

A. We presented the bills in Congress, accompanied with pe
tions of claimant for further relief, and we appeared before the co
mittees of the two Houses, but without any direct result until Fe
16th, 1887, when the claim was referred to the Court of Claims b
the Committee on War Claims of the House of Representative
under the provisions of the act of March 3rd, 1883, commonl
known as the "Bowman act."

I will offer in evidence certified transcript of the docket entri
in the Court of Claims, Julia A. Nutt against the U. S., case N
1851.

Q. Mr. Knut, the first entry I find in this copy is a call on th
clerk of the House of Representatives for papers; I will ask yo
who made that call.

A. The call was made upon my motion.

Q. Did you become the attorney of record in that case?

A. Yes, I was at the time.

Q. What was the result of that call on the clerk of the House
Representatives?

A. All the papers belonging to Congress in regard to the clai
were sent down, numbering 245, received from the clerk of th
House of Representatives.

Q. Now did you or did you not proceed to take depositions i
that case?

A. I did.

77 Q. According to the docket entries what was the first de
osition taken?

A. April 23rd. 1887, deposition for the claimant.

I offer in evidence a printed copy of depositions and eviden
taken in congressional case No. 1851, Julia A. Nutt, executri
against the U. S., identical in all respects with the original.

Q. It appears from this record that the deposition of Jos.
O'Brien was taken for the defendant at Natchez, Miss., on the 12
day of April 1887, and that the Government was represented b
Mr. Felix Brannigan.

A. I represented the claimant in taking that deposition. It w
a deposition taken on behalf of the Government to sustain some
parte evidence of the Quarter Master General.

Q. Did you take the deposition of Mary Ann St. John, Natche
Miss., on the 14th day of April, 1887, for the claimant?

A. I did.

Q. Did you take the deposition of —— —— for claimant
Natchez on April 14th, 1887?

A. I did.

Q. Did you take the deposition of your mother, the late Mrs. Jul
A. Nutt, at Natchez, Miss., on Nov. 23rd. 1888?

A. I did.

Q. Now Mr. Knut, look at the copy of the docket entries whi

you have and state to the court what motions were made, if any, at the trial of the cause?

Objected to.

A. On the 22nd of April 1888, I made a motion for extending the time for filing the petition, which was allowed, whereupon I filed the petition.

Q. Prior to that time what other steps besides those in the original case in 1882 had you taken looking to an adjustment of this controversy between Haller Nutt and the Government?

A. It appeared to me that a reference of the claim to the Quarter Master General by Congress was a reference of the disputed matter to the refereee, that a payment of a part was an acceptance by the Government which made the balance due, and that I
78 could recover the balance at law by suit against the Government.

I find that I omitted a letter which should have been introduced in the first portion of this testimony. I will introduce it now. (Permission granted by the court.)

Q. Look at the letter I hand you and identify it.

A. It is a letter from my mother to me, dated Longwood, June 21st, 1886.

Offered in evidence; obce-ted to; same objection; filed and marked Exhibit 29.

Q. Mr. Knut, whom did you employ to assist you in the prosecution of that suit?

A. Martin F. Morris, an attorney of Washington, D. C., surviving partner of the old firm of Merrick & Morris.

Q. Why did you employ Judge Morris?

A. I consider it my duty to my clients to do everything that was best for the advancement of their interest. This was a lot of money at stake, and although I myself felt that I could handle the law questions arising, I did not think it just to them to rely entirely upon myself, and upon this occasion as upon other occasions subsequent to this I sought additional help. Mr. Morris was a man of a very astute mind, he stood very high at the bar, the question was one that required the most astute handling, and I did not think I could find a better man in Washington city than Mr. Morris, and I think now that I could not have found a better man.

Q. Did you make a written contract with Mr. Morris?

A. I thereupon entered into an agreement with Mr. Morris.

Q. I ask you to look at this letter.

A. I hold in my hands my office copy of the agreement made with Mr. Morris May 10th, 1887.

(By Mr. MARTIN:)

Q. Was any judgment ever obtained on that suit?

A. No.

79 (Ex. 30.) I offer this paper in evidence. Objected —. Objection overruled and exception reserved.

Q. Mr. Knut after that contract was made with Mr. Morris, what was done under it?

A. After that contract was signed, we filed the petition in the Court of Claims and asked judgment.

Q. That was case No. 15652?

A. Yes.

Q. What did you personally have to do with the preparation of that case?

A. I drew the petition and left with Mr. Morris a complete syllabus and brief covering the law points of the case and in support of it, and all the decisions I could find; I myself did not appear on the brief as an attorney because I swore to the petition for my mother, and appeared before the court in that light, and therefore Mr. Morris's name appears alone as attorney; the case was fully argued in the Court of Claims, and that court decided against our contentions, whereupon we appealed to the Supreme Court of the United States, and the Supreme Court of the United States affirmed the opinion of the lower court at the October term 1887. I have here complete record of the case.

Q. What did you do in preparing the case for argument or submission to the Supreme Court of the United States, if anything?

A. I had already done everything. I do not think anything new was brought out in the Supreme Court, if there was it was Mr. Morris who did it. We consulted together and advised with each other about it?

Q. Mr. Knut, we will now go back to the proceedings in the Court of Claims, under the reference of February 16th, 1887, known as congressional case 1851, you have testified to taking certain depositions which were filed on April 23rd and May 6th, 1887. I will ask you whether or not in the prayer of that case the deposition of R. H. Holmes, taken at Natchez, Miss., on the 28th of Sept. 1882, was used.

A. It was.

Q. Who appeared for the complainant in the taking of that deposition.

A. I did.

Q. How about the deposition of Stephen Hargrove taken at winter quarters on the 29th of September, 1882?

80 A. That was used at the trial.

Q. Did you appear at the time the deposition was taken?

A. I did.

Objected to; objection overruled/ exceptions reserved.

Q. Mr. Knut, to shorten matters, I will ask you who took all the depositions which were taken in Mississippi and Louisiana in 1882,

and which were used in the Court of Claims in congressional case 1851.

A. I did.

Copy offered in evidence; objected to; objection overruled and exception reserved.

Q. Mr. Knut, what steps were taken in that court in case 1851 by defendants on or about December 1st, 1890?

A. Defendants came into court with a motion to dismiss for want of jurisdiction; I represented the claimant; the case was argued and submitted to the court. This paper is the opinion of the Chief Justice of the Court of Claims on this motion of the defendants to dismiss the case for want of jurisdiction, dated Dec. 1st, 1890.

Q. Suppose you state to the court what other services were rendered in and about that case up to the final disposition of it by the Court of Claims?

A. Defendants Nov. 19, 1890, filed their briefs on the merits; on the 25th of Nov. they filed a plea in bar; Nov. 20th I filed a demurrer to that, and Nov. 26th, 1890, the question to dismiss for want of jurisdiction was argued and submitted; Dec. 1st, 1890 the Chief Justice handed down the findings of the court, overruled the motion of defendants to dismiss the case; Dec. 1st, 1890, the case was argued and submitted on the question of loyalty; the same day the court passed upon the question of loyalty; on Dec. 1st, 2nd and 3rd, the case was argued on the merits and submitted; Jan. 5th 1891, the court filed the findings of fact; Jan. 9th, 1891, I made a motion to send up the findings of fact to Congress; on the same day the motion was allowed and the findings of fact were certified to the committee on War Claims of the House of Representatives.

Q. What did the court find to be due in the claim if anything?

81 A. The court found due the claimant $89,999.88, and at the same time carried with its findings that the Quarter Master General had not erred in his findings as to the value of the cotton gin worth $20,000.00 and 700 bales of cotton worth some $111,000.00.

Q. I will ask you what condition that left the case in in regard to the payment of the $89,999.88?

A. The condition of the case was this. The Quarter Master General made his report in January 1884, March 3rd 1883, without claimant being allowed to be heard in defense thereof, though I repeatedly solicited a hearing, the Committee on War Claims, through Mr. A. H. Smith, made an adverse report upon the findings of the Court of Claims, and it was this adverse report made by Mr. Smith, which as a matter of fact was made by the clock fifteen minutes after the time for Congress to adjourn, when there could be no opportunity for a member of Congress representing this district to take any action to protect the interest of the claimant. This adverse report was the cause of our troubles in Congress, and stopped

us getting any considerable relief further than the $35,000.00. The adverse report stirred up such a sentiment in the House of Representatives that we were compelled to address ourselves to the Senate, and allow this adverse report to be forgotten if possible, because it was full of misstatements; it was *ex parte* and wholly erroneous. Mr. George introduced a bill for us in the Senate to pay the amount found due by the Quartermaster General. The bill was referred to the Committee on Claims in the Senate.

Q. I want to ask you what steps were then taken in order to secure the payment of the award made by the Court of Claims?

A. The findings of the Court of Claims were reported to Congress and Congress was to say as to what was to be done with them and an appropriation was necessary to carry out these findings.

Q. Well, what effort, if any, did you make to secure this appropriation?

A. On February 27th, 1891, I prepared an amendment to the general deficiency bill, gave it to Mr. George, who on that day introduced it into the Senate, and it was referred to the Committee on Approppriations. The amendment was to pay the amount
82 found due by the Quarter Master General and by the Court of Claims, towit. $221,327.88.

Q. That amount included the amount for the gin and cotton?

A. It did.

Q. Did you prepare any briefs on that subject?

A. I did.

Q. What is this paper I hand you?

A. I prepared a brief on this question, had it printed and submitted it to the Senate.

Offered in evidence and marked Exhibit 31.

Q. Did you at the time prepare any other briefs on any of the questions involved in the case?

A. I had a brief that I had written and had printed in February 1884 on the question of force and effect of safeguards The purpose of the use of this brief at that time was to obtain the appropriation for the cotton gin and cotton, $131,000.00. Congress had never recognized that the Government was obligated to pay for property destroyed, only for stores and supplies taken and used by the army. Included in this report of the Wuartermaster General there is a cotton gin and cotton amounting to this $131,000.00, and the object of this brief was to show that Congress was under obligations to pay for those items.

(Ex. 32.) I offer in evidence certified copy of motion to dismiss. Exhibit 33.

Q. What steps did you next take in Congress toward securing the appropriation to pay this claim?

A. I prepared a bill and gave it to Gen. Catchings to introduce

in the House of Representatives, which he did on January 1st, 1892.

Q. To what committee was it referred?

A. To the Committee on War Claims.

Q. What action was taken by that committee?

A. On July 7th, 1892, Mr. Cobb, of Missouri, reported this bill back with a favorable recommendation.

Q. I will ask you who prepared or assisted in preparing that report

A. I appeared before the committee and argued the facts and the law in the case.

83 Q. Did you write or prepare any briefs on the House bill in the Catchings bill to which you have referred?

A. Sept. 5th, 1892, I prepared and printed a brief in support of the bill introduced by Gen. Catchings.

Q. What did you do with that?

A. I placed it before every member of Congress and every Senator who I thought would possibly read it.

Copy of brief offered in evidence, filed and marked Exhibit 34.

Q. About that time what other steps did you take looking toward the payment of the award.

A. July 12th, 1892, I prepared another amendment to go in the general deficiency bill and gave it to Mr. George, who introduced it into the Senate, and had it referred to the Committee on Appropriations.

I offer in evidence amendments; filed and marked Exhibits 35 & 36.

Q. Was anything done in Congress with that?

A. No, no appropriation was made.

Q. I will ask you to look at that document and state what it is.

A. There was pending in the 53 Congress, that is the Congress which sat in 1893, a bill before the Senate, and one before the House of Representatives, making appropriations to carry all of the claims allowed by the Court of Claims under the Bowman act. This bill amounted to a total of several millions. The Nutt claim was included. At great labor, I got up a brief on the questions and this brief included a history of the appropriations made in payment of southern war claims. I spent two solid weeks in preparing this brief.

Q. This brief, as I understand it, is on the subject generally of the omnibus business, and in suppport of the Nutt claim.

A. Yes.

Offered in evidence; filed and marked Exhibit 37.

Q. You will prease explain to the court what transpired in regard to the Nutt claim in the omnibus bill.

84 A. Feb. 4th, 1895, this omnibus bill came up for consideration in the House of Representatives on the motion of Mr. Catchings, of Mississippi; Mr. Beltshoover, the chairman of the Committee on War Claims attacked the bill, and singled out the Nutt claim for his special attack. This attack of Mr. Beltzhoover was made at the instigation of a party who had sought to claim an interest in the claim whom I had turned down.

Q. Was the attack based on fact or fiction?

A. The attack was based upon fiction, vindictive, full of false statements. The omnibus bill went down to defeat on Feb. 4th, 1895.

I offer in evidence a copy of Congressional Record Feb. 4th, 1895, or rather certain portions of it. Filed and marked Exhibit 38.

Q. What steps did you next take in regard to this case?

A. This speech of Mr. Beltzhoover stirred up such a hornet's nest in the House of Representatives that I thought the best thing was to get as far away from it as I could, and I went over to the Senate and directed myself toward doing something in the Senate, with the result that on Feb. 20th, 1895, the Senate passed a resolution rereferring this claim to the Court of Claims for reinvestigation and refinding of facts and report back to Congress.

Q. Mr. Knut, what was done under the reference of the Senate Feb. 20th, 1895, to which reference has just been made.

A. The case was docketed in the Court of Claims under its old number, and calls made upon the War Depatrment and Treasury for information and replies returned, and on March 16th, 1896, I took at Natchez, Miss., the deposition of Haller Nutt Jr., Jas. O'Cavanaugh and Mrs. Julia A. Nutt, and in Vicksburg, Miss., the deposition of Stephen Hargrove; on March 31st, I came into the court with a motion to file petition, which was allowed. I filed the petition and on April 20th, 1896, I filed motion to advance the case on the trial docket. This same day this motion was overruled; on April 21st I filed request for findings of fact; on Nov. 17th, I filed motion to amend petition, at the same time I filed request for findings of fact with the brief; on Nov. 20th, the motion to amend the petition was allowed. On Nov. 25th, the case was argued and submitted. Jan. 28th, 1897, the case was remanded for re-argument before a full bench, one judge having died, and there being only
85 four judges on the bench the day the case was first argued. On March 15th, 1897, I filed motion for leave to substitute J. C. Williams as administrator, vice Julia A. Nutt, deceased, which was allowed. March 16th, re-argument of the case was begun, on the same day the motion made at the time of filing the motion to substitute administrator was allowed and a certificate of bond etc. was filed. March 17th, the case was re-argued, and the arguments concluded and the case submitted. June 3rd, 1897, an affidavit of Gochagan was filed by me. June 7th the affidavit was struck from the file. Dec. 6th, 1897, the court filed its findings of fact to be cer

tified to Congress. May 22nd 1899, I made a motion in court to send up the findings of fact to the Senate. Dec. 9th, the findings of fact were certified to the Senate, and they are the facts upon which the appropriation was finally made.

Q. Explain to the court why these findings were not provided for in the appropriation bill, omnibus bill, which became a law on the 3rd March 1899?

A. The findi-gs were not before Congress.

Q. Why did you not have them certified to Congress so that they might have been included in that bill?

A. I had been thoroughly convinced that it was utterly impossible to get them in the bill. The chairman of the Committee on War Claims of the House of Representatives just seemed to put his foot right down and said they should not go in the bill; no omnibus had passed since 1891. These war claims were in bad odor; the friends of the bill on the floor of the House who had it in charge were desirous of bringing before the House an omnibus bill, containing only such items to which there could be no possible objection, and a bill that would not cause any discussion or dispute. You will understand that there were some 10,000 bills introduced into Congress annually, and the time to pass about 1/100 of them. A bill of this kind must necessarily pass only by unanimous consent; that is, the rulings of the House are such that — is impossible to get up one for consideration without unanimous consent.

Q. Were any pledges made to you prior to the passage of the act of 1899 in regard to the Nutt case provided you would not
86 insist upon it going into the bill?

A. Mr. Mahon, the chairman of the Committee on War Claims, gave me his pledge that if I would ask our representative on the floor of the House not to press the Nutt claim nor insist upon its going into the bill, it should go into the next omnibus bill in the next Congress.

Q. Was that pledge kept?

A. It was.

Q. Mr. Knut, I want to call your attention to a report made in this case by the Hon. G. F. Hoar, chairman of the Committee on Judiciary, and member of the Committee on Claims in the Senate, March 17th, 1894, in which he finds that eliminating certain items from the Quartermaster General's report there is due to the estate of Haller Nutt the sum of $85,556.17, and to ask you what was the result of the legislation that followed that report?

A. This was a report on a bill that I had had introduced into the Senate by Mr. George to pay the full findings of the Quartermaster General; the Senate committee reported back to the Senate a substituted bill or amended bill to carry the motion in question; that bill went to the calander. In March 1884, there came over from the House the omnibis bill to pay the claims allowed by the Quartermaster General under act July 4, 1864, a small omnibus bill; this bill in the committee of the Senate was amended so as to include the Nutt

claim, reported back to the Senate, taken up by the Senate and passed, carrying an appropriation of $85,556.17 to pay the Nutt claim, and the bill went to the House; the House non-concurred, when the Senate asked for a conference;—I will say here——

Objected to.

Q. So that, Mr. Knut, after the appropriation of 1884 there was a balance of $50,000.00 still due the estate?

Objected to; objection sustained.

Q. How many trips, if any, did you make from Washington to Mississippi in connection with this case?

Objected to.

Q. How many trips did you make from Washington to Mississippi in connection with this case between 1882 and June 1885?

87 Objected to.

A. I came each time I took testimony, and on one occasion when I did not take testimony. My record shows the number of times I took depositions, I think four times.

Q. How many times did you come to Mississippi after June, 1885?

A. I came here three times.

Q. Upon these trips did you pay your expense yourself, or were you paid by your client?

A. I paid them myself.

Q. In the preparation of this case in all its stages in Washington and elsewhere, including the taking of depositions, who has paid the expenses necessary and incident thereof?

A. I paid them all. There was a slight refund paid me for money I had actually paid out prior to 1882, but from the time the claim was paid in 1884 up to the last *apyment*, I advanced every dollar that was paid out in the prosecution of this claim.

Q. Any of that been refunded you by any person?

A. None of it.

Q. The references to proceedings which have been had in the Senate of the United States, and which are in evidence in this case, since June 1885, I will ask if any person to your knowledge has ever prepared a bill, resolution or amendment which has been offered in that body affecting *hi*s cause other than yourself.

A. No, except the work the Senate did in reporting back some amended bill that I have had introduced.

Q. Did you ever appear, and if so, how often before the Senate Committee on Claims in connection with this case since 1885?

A. With the exception of the time that the claim was pending in the Court of Claims, I was continually before the Senate and House of each Congress; I appeared before these committees and made arguments in this case.

Q. Do I understand you to say the same is true of the House as in the Senate.

A. I stated so in my answer.

Q. Outside of Judge Morris, who have you ever employed to render you assistance in the case?

88 A. I at one time employed Shellaberger & Wilson, whose names are on one of the papers which have been handed in, but that employment did not last very long, for the reason that Judge Wilson, who was the member of the firm, really, that I employed, at this time his services were needed in Congress, every moment was taken up with the Snyder murder trial, and outside of having his name on the brief, I do not think he did anything.

Q. What was the character of Shellaberger & Wilson?

A. They were unquestionably the leaders of the bar in Washington.

Q. Who else did you employ?

A. During the session of Congress when I sought to get the amendment on the general deficiency bill, I employed Hon. Philip Thompson a former representative in Congress from Kentucky.

Q. Who else?

A. After that I employed Mr. John Paul Jones and Messrs. Ralston & Siddons.

Q. Is your contract with Ralston & Siddons still in force and effect?

A. It is.

Q. From your experience and observation in Washington, do you know of any Bowman act case for supplies and stores which has been appropriated for otherwise than in the omnibus bills of 1891, 1899 and 1902.

Objected to; ruling reserved by the court.

A. None whatever.

Q. Approximately, in how many cases under the Bowman act have you acted as attorney for since 1883?

A. I have been attorney of record in the Court of Claims in about 575 cases of this nature.

Q. Where were those cases mostly from?

A. Mostly from Mississippi.

Q. Did you ever have any case from this and adjoining counties?

A. Yes.

Q. In these cases what was your usual customary fee?

Objected to for irrelevancy and incompetency; ruling reserved by the court.

A. My contract nearly always called for a fee of 50 per cent., I to pay the costs.

89 Q. Where you were not to pay the costs what was the customary fee?

Objected to; same objection; ruling reserved by the court.

A. Sometimes 25 per cent., otherwise 33⅓ per cent.

Q. What is the fee usually ordinarily charged by members of the Washington bar in cases of this character?

Objected to.

Q. Do you know what the fee ordinarily charged by members of the Washington bar in cases of this kind is?

A. I do.

Q. State what it is.

Objected to; same objection; ruling reserved.

A. 33⅓ per cent. where the claimant pays the expenses and 50 per cent. where the attorney pays them.

Cross examination:

Q. Mr. Knut, in your examination in chief, you stated that at various times during the prosecution of this claim you employed attorneys to assist you. Who was the first attorney who was employed by you to assist you in the prosecution of *his* claim?

A. Judge Morris. That is my recollection.

Q. When was Judge Morris employed by you and what was the status of the claim at that time?

A. Congress had made an appropriation July 5th, 1884, to pay the sum on the findings of the Quartermaster General; that amount was paid to the claimant during that July, and it was a question as to whether under the appropriating act it was not a receipt in full for all claims of the estate, or otherwise, a settlement in full; that was the opinion of most people whom I consulted and who looked into the matter. But owing to my deep personal interest in the matter and the solicitude for my family, I proceeded to employ Judge Morris to aid me in suing the Government in the Court of Claims and on appeal if necessary, on account stated.

Q. Was that fee not contingent upon success of that suit?

A. Entirely so.

90 Q. Whom did you next employ to assist you in the prosecution of this claim?

A. Shellaberger & Wilson, or Mr. Phil Thompson, without refreshing my memory by reference to the papers, I would not say which I employed first.

Q. Were they employed to appear before any court in the prosecution of this claim, or was it before the committee of the Senate?

A. Phil Thompson was employed by me to present the merits of the claim together with its legal aspect before Congress on the findings of the Quartermaster General and the Court of Claims.

Q. Do you remember about when it was?

A. It was I think at the time I had offered the amendment to the general deficiency bill, testified to above.

Q. Was he employed to perrorm purely legal services or was he

employed to use his personal efforts with Congress to get this claim through Congress.

A. Mr. Thompson was a lawyer of good standing, a member of the bar of the Court of Claims, the supreme court of the District of Columbia and the Supreme Court of the United States; I employed him as a lawyer to aid me in presenting the legal points of the case to Congress, and the merits. I employed him for his ability as a lawyer, thinking him the best man for the special purpose I had in view.

Q. Is not Mr. Phil Thompson considered one of the most notorious lobbyists in Washington city, and was he not at that time?

A. He is not so considered now, nor was he then.

Q. Was he not at that time associated with a man of the name of Donaldson, and was not the firm of Thompson and Donaldson engaged in lobbying bills through Congress?

A. No. Mr. Donaldson, of whom you speak, was a lobbyist, pure and simple; he was not a member of the bar. I was frequently in Thompson's office, and the door bore the sign of Phil Thompson alone I never met Mr. Donaldson in that office, nor did Mr. Donaldson ever have anything to do with this claim; on the contrary I resisted all the efforts made on me to engage Mr. Donaldson in this case, efforts and attempts made by my brother, the respondent in this cause, on the ground that Mr. Donaldson was a lobbyist.

91 Q. Who succeeded, if anyone did, in the employment of Phil Thompson in this matter?

A. Mr. Thompson was a member of Congress from Kentucky, that threw me in intimate association with him. My grandfather was a Kentuckian, and we have extensive family connections in Kentucky, and while Mr. Thompson was a member of the House of Representatives I became very intimate with him, and that intimacy has extended from that day till this, so much so that we call each other by our first names; I have known him to be a man of a great deal of ability and strong character? No one suggested him to me.

Q. I understand Mr. Thompson was employed by you simply on account of his legal ability, and not because he was a lobbyist?

A. Yes sir.

Q. And that you refused to employ Mr. Donaldson because he was a lobbyist. Is it true that you offered to pay Mr. Donaldson $1000.00

A. Never, I never had any business relations with Mr. Donaldson

Q. When was Mr. John Paul Jones employed by you and what was the status of the claim at that time?

A. Mr. Jones and I have been associated together as partners, so to speak, in this claim for some ten or twelve years, and during that time he has frequently assisted me in this claim, though I never made a specific contract with him until about three years ago

Q. When did you employ the firm of Ralston & Siddons?

A. At the same time.

Q. What was the status of the claim when you employed John Paul Jones and Ralston & Siddons?

A. It was pending before Congress on the findings of fact from the Court of Claims.

Q. Are these all the persons you have employed since you became connected with the claim?

A. Yes.

Q. Did you not employ your brother, Calvin R. Nutt, to assist you in getting this claim through Congress on promise of compensation in money out of what you were to receive if you succeeded?

A. I overlooked that; he being a member of the family, I did agree once to give him five per cent., or five thousand dollars, I am not sure which, to be paid out of my fee on return for work in assisting me.

92 Q. In 1891 did you not employ him for the first time and agree to pay him *him* five thousand dollars out of your fee for assisting you in the matter?

A. That may have been the date, I am not certain.

Q. How long was he in your employ?

A. I cannot say, but a very short time; I know the employment brought no results and I dismissed him.

Q. Did you ever employ him after that?

A. I do not think so.

Q. Mr. Knut, in 1899 did you not re-employ him and promise to give him five per cent of the total amount received out of your fee, if successful in getting the claim through Congress?

A. Such an assault was made upon me by my family that it is possible that I did, but I cannot say positively now. I will say in this connection, my brother and I had not been on good terms for a number of years, but a temporary reconciliation took place, and it is possible that I employed him at that time.

Q. Where does Calvin R. Nutt live?

A. His residence is in Frederick Md., about firty five miles from Washington. He spends a good deal of his time in Washington.

Q. How long has he been living in Frederick Md.?

A. He has resided there for a number of years, I do not know——

Q. Since 1891?

A. No, he went there to reside in 1893.

Q. Where had he been living between January 1st, 1891 and the fall of 1893?

A. He first came to Washington, and he took a house in Washington and spent the winter, but he came off that summer, I think to spend the summer at Berkeley Springs; the next winter I do not know exactly where he went, but the summer of 1893 he spent at White Sulphur Springs, W. V.

Q. Is he a lawyer?

A. He thinks he is a lawyer, but I do not.

Q. Is he a member of the bar?

A. No sir.

Q. Has he ever been a member of the bar?

93 A. Not to my knowledge.

Q. Has he ever attempted to practice law?

A. I do not know of it.

Q. What business, if any, had he been engaged in since 1891?

A. I cannot say I know of any special business he has been in.

Q. What was your object then in employing Mr. Calvin R. Nutt to assist you in getting the claim through Congress?

A. The claim before Congress stood in this position: There was the greatest prejudice among northern men to vote for southern war claims, and a corresponding indifference on the part of southern men to support those claims, for the reason that the claims were, in their opinion, loyal to the wrong side, and for that reason it was extremely difficult to get members of Congress and Senators to take an interest in such a claim, or look into it, and though I prepared briefs and printed them upon every occasion that I took the matter up before Congress, it was with the greatest difficulty that I could get the members of Congress and Senators to read those briefs. I talked the matter over and tried my best to explain the legal status of the claim to my brother; he was personally interested in the claim. I wanted him to take an active interest in it, and I presented the legal aspect of the claim and gave him copies of my brief with the expectation that he would give them to such members of the Congress cabinet as would read them, present the claim from that point of view.

Q. He was to receive $5000.00 out of your fee?

A. Whatever the agreement was.

Q. Your brother was a member of some social clubs in Washington at that time, that you were not?

A. We both belonged to the leading social clubs in Washington.

Q. He was acquainted with a great many leading Senators in Washington?

A. Not a great many.

Q. He was in a position to talk to them as one friend to another?

A. I don't know about that, he knew some members of Congress and Senators, who I am sure would be willing to give him attention.

Q. These men you could not reach?

93½ A. Oh yes, I might have reached them.

Q. But you did not like to approach them?

A. I had so much to do that it looked to me that if my brother gave them these briefs it would be practically the same as myself, and I wanted him to have some compensation; I regarded it as a gift from me to him, because I thought he ought to have done that without compensation.

Q. Did you not from time to time suggest the names of Congressmen and Senators that he ought to approach for the purpose of getting — to vote for it and fight for the claim?

A. As you put the question, no; we met several times and talked

about it, and it is more than probable that in our conversations the name of some Senator or Congressman would come up, and it would be decided between us that he should give these briefs to certain Senators and members of Congress.

Q. If you found that every Senator or Congressman was antagonistic to the bill, you would discuss that situation as to how to appease him and keep him from fighting the bill?

A. No, sir.

Q. Did you ever at any time suggest to him that Stewart of Nevada — a good man to use his influence and get some one to use his influence to prevent him from fighting it?

A. Never; Senator Stewart's wife was a daughter of Gov. Foote of Mississippi, and I was on the most intimate terms with the whole family, frequently dropped in to dinner at their house, and looked upon Senator Stewart just about as I would upon Senators from Mississippi, and there never was a time when Senator Stewart opposed this claim except upon purely legal grounds, and I will say when he made this final report from the Committee on Claims during last Congress, we argued over two hours before we could convince him that the claim was just, and my social relations had nothing to do with influencing his mind, except that I suppose he would naturally give me the benefit of any doubt.

Q. Was your brother Calvin not employed by you to personally solicit members of the House and Senate and influence them, if he could, to either support the bill or not antagonize it?

A. No.

94 Q. Did you not in 1899 or 1900 employ him to perform like service promising to pay him five per cent. of the full amount recovered out of your contingent fee?

A. I did not; I will say in this connection that I think it was in 1900 that I wrote to my brother to the effect that as he was rendering no service to the claim and as I had promised payment to him, that I could do better with than money elsewhere; and it was after that that I employed Ralston & Siddons, and made my written contract with Mr. Jones. I was paying enough out of my fee and I was getting no returns whatever from my brother's assistance.

Q. After that did you ever employ him again?

—. ——.

Q. It was in 1899 or 1900 that you employed him and promised to pay him this five per cent, was it not?

A. I am satisfied in my own mind that it was prior; I know it was prior to my engaging Ralston & Siddons that I discontinued my brother's services, or broke off my agreement with him.

Q. Mr. Knut, will you please examine the letter which I hand you dated Natchez, Miss., April 25th, 1901, and state by whom it was written and by whom signed.

A. The letter was written by me; it is my letter.

Letter offered in evidence on cross examination as Exhibit # 39, filed and marked.

Q. I understand you employed no one to do what is called lobby work before Congress?

A. What is your exact definition of lobbying?

Q. To solicit a Congressman and get him to vote for a measure as a matter of favor rather than a right.

A. No.

Q. Did you ever employ any one to go to any Congressman and solicit him to vote when that Congressman was not in the committee room or not on the committee?

A. I did not. I will say however that members of my family who have been in Washington, for instance my mother, and she sent her card in to see Speaker Reed, and Mr. Reed came out and saw her, and she appealed to him to allow her bill to go up and be passed, and my mother appealed to others to put her claim
95 through. I introduced these gentlemen to my mother. I have knowledge that my sister Julia did practically the same thing, and I have knowledge that my sister-in-law, Mrs. C. R. Nutt, did the same thing, and I have no doubt that my brother did the same thing, owing to their interest in the claim as heirs. I deny that I had my brother under contract for that specific object. My attitude was that he should use his influence as heir, and not as an attorney for me.

Q. Was it in 1891 that the claim was first put on what is known as the omnibus bill in the Senate or on the deficiency bill?

A. It did not go on the general deficiency bill.

Q. When did this claim first come up for consideration by Congress?

A. In 1875.

Q. When was it that Congressman Beltzhoover of Pa. made this attack upon the Senate bill, and cause- the defeat of *h*is bill?

A. Senator Beltzhoover did not make a speech on the Senate bill, it was the House bill and it was in 1895.

Q. Please look at the letter which I now hand you, dated Longwood, April 25th, 1901, and state who wrote it, and to whom it was written.

A. This letter was written to me by my brother.

Letter offered in evidence on cross examination. Filed and marked Exhibit # 40.

Q. This letter, I understand, Mr. Knut, was written April 1st, 1901, at the time when you say Mr. Calvin R. Nuttt was not in your employ?

A. He was not. I was under no contract to pay him a cent.

Q. In this letter you state "you must go slow in whatever you do in regard to the claim; I hope your good reason will cause you to let matters alone." Did this language "I hope your good reason will cause you to let matters alone" refer — the claim against the Government, or did it refer to the effort that was being made by some

of the heirs of the administratrix to discharge you and employ some one else in your stead.

A. It referred entirely to the effort being made to employ another attorney in my place.

Q. Mr. Knut, you sat that on that date Mr. Calvin Nutt was not in your employ, what then did you mean by the language of your letter of date April 25th, 1901, which is marked Exhibit #35
96&97 to your deposition, written thirteen days after the letter of April 12th, in which you state "I do not see how you can throw up your hands and hold off from the claim after having done so much; I hope you will reconsider."

A. My explanation is this: My sister Julia was irreconcilable; it was impossible to reason with her; she had broken off all communication with me; she was in constant communication with and acting under the advice of M. F. Morris, who had been for years trying to inject himself into this claim and get a part of the fee. I did all I could to keep up my pleasant relations with him in order to have him control my sister and keep her quiet, and impress*em* upon Mr. Williams to use his influence in keeping my sister out of Washington, as I was of the opinion that her presence would only do harm. I explained the situation of things in Congress to my brother as well as I could, and when I left Washington, I left Washington with the understanding that my brother would be a friend to me and would not take the side of my sister Julia against me, but would act as an intermediary between us, and left me with that understanding. I came home to Mississippi with that understanding, and I will say here in this explanation that John lived up here in the country, and not understanding the situation in Washington and believing that there was a good claim that ought to be paid, naturally held me responsible for its non-payment. My brother Calvin had a great deal of influence over my brother John, and I relied upon this good feeling and good understanding between my brother Calvin and myself to influence John. Now after I got home I found another condition of affairs had taken place, other conditions arose, and they are best set forth in the letter which I wrote my brother. My brother Calvin from a friendly attitude to me, and under agreement that he would not oppose me any further, had gone over to he other side after a visit of Mr. M. F. Morris, to his house in the country. I appealed to him to reconsider his attitude and take a friendly interest in this case from my point of *f*iew, and that he would not aid them in attempting to have the claim taken out of my hands. Congress was not then in session, it had adjourned March 4th and would not meet again until December, and nothing at all could possible be done about the claim until Congress met.

98 Q. Mr. Knut, will you please state to the court when it was that you discharged your brother Calvin Nutt finally?

A. I cannot state the exact date, but I am very positive in my mind that it was prior to engaging Ralston & Siddons, at any rate

during the winter of 1900–1901. My brother had no engagement with me whatever to pay him anything out of this claim; he was not in Washington, he was loving in Frederick, spent the winter up there; one thing my brother did though, he came to Washington to look into the status of the claims and made two appointments with me to meet me in the Committee on War Claims of the House of Representatives, where a full examination and explanation of the situation might be made. He broke these engagements, and broke a number of engagements with me in my office. One day he came to my office, and all he wanted to know was, was the Nutt claim included in the House omnibus bill which had passed the House of Representatives and been reported back from the senate. When I showed him a copy of the bill as reported back from the Senate committee, containing the Nutt claim, he did not want to know anything more; that was enough.

Q. His employment ceased sometime during the year 1900 or the first part of 1901?

A. I cannot say when I wrote him the letter, but I did write him a letter, that it might be before him in writing, and that he could not expect any compensation from me for what he might perform. I do not know what was the date of that letter, I did not keep a copy of that letter.

Q. Mr. Knut, the letter which I now hand you, dated Natchez, Miss., May 1st, 1901, state who wrote it and to whom it is written.

A. That letter was written to me by my sister Mrs. Ward.

Offered in evidence on cross examination, filed and marked Exhibit 41.

Q. Please examine the letter I now hand you dated Owensboro, Ky., Feb. 26th, 1900.

A. This letter was written to me by my brother Calvin.

Offered in evidence; filed and marked Exhibit 42.

99 Q. Do you know to whom Calvin Nutt wished to pay one thousand dollars?

A. I do not know to whom it was; I was relying upon my brother's judgment at that time.

Q. When did the Committee on War Claims of the lower house of Congress report the omnibus bill, which afterwards was so amended in the Senate as to include this claim.

A. There were two bills in the House, one introduced by Mr. Mahon, Jan. 5th, 1901, referred to the Committee on War Claims and reported back favorable with amendments Jan. 15th, 1901, another introduced Jan. 8th, 1901, by Mr. Gibson of Tennessee, referred to the Committee on War Claims and reported back favorable Jan. 11th, 1901. The bill reported back by Mr. Mahon contained the Knut claim, the bill reported back by Mr. Gibson left the Nutt claim out; the latter is the bill that was called up, the former it being

held would cause too much debate, and it was not thought possible to pass it as it was.

Q. Did the omnibus bill which was finally enacted into a law and which carried the appropriation in the neighborhood of $90,000.00 to pay the Nutt claim, was this $90,000.00 included in the bill as it originally passed the House?

A. No.

Q. Was the bill so amended in the Senate as to appropriate this claim?

A. It was.

Q. Who was the chairman of the Committee on Claims in the Senate?

A. Senator Warren of Wyoming.

Q. How long previous to this amendment being placed on the omnibus bill which carried this claim that you had seen the chairman of that Committee on Claims to talk with him about this claim?

A. I do not remember ever having any talk with him about this claim except I think one day in the committee room, he himself remarked to me that the claim was in his bill, or the committee had decided to put the claim in the bill. I went to the committee after adjournment of the committee, and he voluntarily made the statement to me that the Nutt claim had been put in the bill. I am not positive whether he told me or one of the clerks.

100 Redirect examination:

Q. Mr. Knut, are you acquainted with Col. S. Donaldson of Washington city?

A. I am well acquainted with him.

Q. Was there ever such a firm as Thompson & Donaldson practicing in Washington?

A. Never.

Q. I believe you testified that you never employed Col. Donaldson?

A. Never; my brother Calvin asked me to employ him; when he first came to Washington he struck up an acquaintance with Donaldson. Donaldson came from Tennessee, and he came to me with the proposition that Donaldson was very influential in Congress, his father married Jackson's daughter, and he was supposed to have a good deal of influence; my brother tried to get me to employ him, but I refused; I knew that he was engaged last winter in lobbying on some very large interest in Congress.

Q. Did you ever know a man named Reed, who was lobbying in Congress?

Objected to as irrelevant.

A. Hy Reed had been for years lobbying in Washington in the interest of the sugar trusts.

Objected to.

Q. Were you ever counseled and advised to employ Hy Reed in this case, and if so by whom?

A. My brother Calvin not only advised but did all he could to pursuade me to employ Mr. Reed in this claim, represented to me that Mr. Reed had powerful influence in the Senate.

Q. What were the suggestions made?

A. It was suggested that I should pay Mr. Reed $5000.00; I refused to employ him.

Objected to, same objection.

Q. Did your brother Calvin ever advise you by letter or otherwise to employ some unknown man of influence upon a contingent fee of one thousand dollars?

Objected to.

101 A. My brother Calvin represented to me that there was a man there who could put the claim through for $1000.00; I did not mind the $1000.00 if the claim could be put through. I did not know who the man was. I replied with my brother to consult with Mr. Jones and I would rely upon his good judgment.

Q. Please examine this letter I now hand you, dated Feb. 23rd, 1900 and state what it is.

Objected to for irrelevancy and incompetency; we especially object.

Q. Mr. Knut, you have testified that you have been employed in and about this case for twenty years or more. I will ask you whether during all that time you ever approached a member of Congress or a Senator, or any person else, who could be of assistance in this case, to solicit their vote or influence with voters upon personal considerations and personal reasons.

A. I never did.

Q. Did you ever appeal to any such persons upon any other than professional grounds?

A. No.

Q. Did you ever offer to a member of Congress or a member of the Senate any award, present or any hope of future gain for his influence or his vote?

A. I never did.

Q. Did you ever authorize any person directly or indirectly to resort to any such means as I have suggested?

A. I never did.

Q. I will ask you the same question as regards the officers of any court or commission before which this claim may have been pending.

A. I never did.

Recross examination:

Q. Mr. Knut, in 1902 did you go before either Committee on War Claims of the House or in the Senate in this claim?

A. Before the Senate, but did not go before the ful- committee of the House. The findings of fact were sent to the Senate and
102 the case was properly before the Senate and that was the reason why I did not push it in the House. It was not officially before the House. Under advice I consulted with the chairman of the Committee on War Claims of the House. He advised me not to attempt to put the claim in the House bill in 1899, so that all I did in the House was to present the facts of the case before such parties as were interested enough to know them.

Q. What did you do in the Senate?

A. It had been put upon the omnibus bill in the prior Congress after quite a contest in the committee of the Senate, after I say, a great contest in the committee, and that contest having once been settled, and the Senate committee having decided that the Nutt case should go in the omnibus bill, I only watched, and my presence was only necessary for me to be there in case of opposition.

Q. You say that the bill in 1901 had the Nutt claim in it?

A. In 1901 it did not become a law.

Q. I am asking about the bill that did become a law?

A. As I said, the Senate committee in a prior Congress had reported back to the Senate an omnibus bill which had passed the House without the Nutt claim; the Senate committee reported that House bill back to the Senate with an amendment including the Nutt claim.

Q. When was that?

A. That was in the prior Congress; there the issue was made as to whether the claim should go into the omnibus bill or not; that having been decided there was no use having a fight over again. The policy was to await developments, and see whether or not the Senate had any idea of excluding it. All I did was to interview Senators Warren, Stewart, and Teller. They said they intended to do as they had done in the prior Congress. Foster, of Louisiana, was a member of that committee; he is a relative of our family, and so far as a Senator could take an interest in the matter, he took it; I explained the situation to him. I was there to defend the claim if necessary.

Plaintiffs here offer in evidence and read the depositions of John S. Blair, Jackson H. Ralston, Thaddeus McClay Mahon, Geo. W. Z. Black, P. E. Dye, and Geo. A. King.

103 To all and each of said depositions counsel for respondents objected.

Mr. KNUT recalled:

Q. Mr. Knut, you may state how much, if anything, you have been paid by John Nutt on account of this fee which is in controversy in this suit?

Objected to.

A. I have received $10,000 on account.

Q. In your examination you have stated that you paid all expenses incident to the prosecution of this suit and that a small amount was repaid you by your mother out of the appropriation made in 1884. I will ask you whether you have been reimbursed for any expenses which have been incurred since that time.

A. I have not.

Q. Have you set up any claim in this suit or elsewhere on that account?

Objected to as incompetent.

A. I have agreed with the administrator to waive any claim I have made upon the estate for money advanced in the prosecution.

Q. What was that agreement?

A. That he would make no fight against my fee.

Cross examination:

Q. When did you have this agreement with Mr. John Nutt?

A. Recently, just before the filing of his answer, prior to his filing his answer to my bill in this cause.

Q. What was that agreement?

A. My agreement was that I should receive no more than 33⅓ per cent. of the claim, which was to be paid in lieu or in satisfaction of all my claims against theest ate for services as attorney, including the advances I had made, that if my fees were paid me under that contract I waived all claims for money advanced.

Q. You say Mr. John Nutt agreed to do that with you?

A. I have an agreement in writing to that effect.

104 Q. Let's see it.

A. I present herewith the agreement.

Objected to as not proving his agreement.

Counsel for respondents respectfully move the court to strike out the last answer of Mr. Knut, including the letters which he offered as substantiating his statement contained in said answer upon the ground that said letter fails to establish the proposition therein contained.

Witness states that Le Roy Percy here mentioned is the attorney of the present administrator in this case, and the administrator was present at the time of the delivery of the letter here filed, read it and approved it.

Complainant rests.

Mr. CALVIN R. NUTT, being sworn testifies as follows.

Q. What is your name.
A. Calvin R. Nutt.
Q. Your age?
A. Forty three years.
Q. What is your place of residence?
A. Frederick, Md.
Q. Are you the Calvin R. Nutt who has been referred to on several occasions in depositions given in this case.
A. I am one of the respondents of S. P. Knut in this case.
Q. How long have you lived in Frederick, Md.
A. I have been living there since—at least I have been there calling it my place of residence since 1893, the fall of 1893.
Q. Where have you lived prior to that time?
A. I lived in Mississippi, Natchez, up to about 1871; I went to Washington city then with my mother, she went there to prosecute the claim against the Government. This Nutt claim against the U. S.
Q. You went with her?
A. Yes, and soon after my arrival in Washington I was appointed a messenger in the light house, principally in the Treasury
105 Department at $60.00 a month.
Q. How long did you remain in that position?
A. I served there until the claim was paid in 1873.
Q. What claim do you speak of?
A. The claim allowing $56,000.00 to my mother in 1873, and I got a leave of absence from the light house and came south to Natchez, where I stayed until the fall, and returned with my mother 1873 and 1874 and resumed my position in the Treasury Department. I was then 13 or 14.
Q. What was your mother's business in Washington at that time?
A. Prosecution of this claim. Her residence was at Natchez generally.
Q. Did you know Gen'l Denver?
A. I did.
Q. Did you know anything about Gen. Denver and your mother as to their contracts in this Knut claim in 1873 and 1874?
A. When I was not engaged in the office I usually accompanied my mother wherever she went, I went with her to Denver's office where this claim was discussed, and we went with her to see various persons, members of Congress whom Denver would suggest to her to see.
Q. In what way were those persons seen by Mrs. Nutt?
A. She made a personal appeal to them.
Q. That was at what time, Mr. Nutt?
A. That began in 1872, I suppose 1872, 1873, and 1874.
Q. Was Mr. S. Prentiss Knut at that time connected with this claim in any way except as one of the heirs.

A. He was not; he was at college in Pennsylvania.

Q. Was there any business between your mother and Gen'l Denver at the time you speak of, except the prosecution of this claim?

A. None that I know of.

Q. What is the connection you had or the knowledge you had of the prosecution of this claim after 1873 and 1874 in Washington?

A. I returned to Washington I think in the winter of 1891. I settled there with a view to making it my home.

Q. What was your business at that time?

A. At that time I had no business whatever.

Q. Are you an attorney at law?

106 A. I am not. Never have been and never made any pretenses.

Q. Were you at any time employed by your brother in reference to thic claim?

A. Soon after my arrival in Washington, Mr. S. Prentiss Knut came to me, and said as I had the time and means to be of great assistance to him in the prosecution of this claim before the Government, and if I would work with him he would allow me $5000 out of his commissions to cover the expenses that I would naturally be at in helping him.

Q. Did you close with him?

A. I did not instantly close with him, but told him that I did not see that I could work to any advantage under him, and if he would employ some counsel whom I felt I could work with, I would accept his proposition, and I named Mr. Phil Thompson as a gentleman with whom I had become associated. He at once refuse- to employ Mr. Thompson, said it was a well known fact that Mr. Thompson was well known as a lobbyist in Washington, and on account of his general reputation it would be harmful to the claim, but he would think the matter over. In a few days he told me he had employed Mr. Thompson, and had promised Mr Thompson $5000 out of his fee.

Q. Did he tell you the character of the employment he expected of Mr Thompson and yourself?

A. He expected that we were to help him in any way we could.

Q. What was the understanding if any between you as to what services you were to render in consideration of the payment of the $5000?

A. It was generally understood that I was to become acquainted with as many Congressmen as possible, Senators and members who could influence Congressmen and Senators as possible, and get their friendly feeling towards our bill, and I was to make personal solicitation and become identified with the bill in that manner.

Q. Did you carry out your part of the agreement?

A. I did to the best of my ability. I went out of my way to meet people, and I sought to be sociable and friendly with them all.

Q. How long did that employment last?

A. It lasted during the summer of 1893, then I received a letter from Mr Knut while at Rockaway island or White Sulphur Springs stating that unless he could dictate to me more thoroughly
107 what I should do in Washington, and as a matter of fact the kind of life I should lead there, he would withdraw his agreement with me as to the $5000. In August of the year 1893, about that time Mr Knut and I became estranged, until I think along about 1897, when the relationship was resumed between us. In the mean time I had taken just such an interest in the claim as an heir. I had assisted in expenses and money and put myself to great inconvenience for the claim.

Q. When rendering these services in 1891 when you made the first contract with Mr. Knut, were you acting under his supervision?

A. Not altogether, I cannot say that I was; I had very few conversations with him in regard to the matter. Mr. Thompson and I conferred together oftener that I did with my brother.

Q. I will ask you this question; dueing that period when working under your first contract with him, what, if anything, passed between you and him in regard to the character of your services and the persons you were to see?

A. He gave me to understand that there were a great many people antagonized against southern war claims, and this claim in particular; he wanted me whenever I heard of anyone opposing this claim, he wanted me to try and make them become reconciled in the matter. I don't know that — asked me to go direct to any person and seek to reconcile them in any way except to go and see Senator Stewart, who was stopping at the Portland hotel. I told him that Senator Stewart was already friendly disposed toward the claim and I did not see the object in going to see him. He said he thought he would have to be reached in a way that we had not thought, and he thought I had better find out in as delicate a way as possible. I called on him and found out he was all right, and there was no object in making any proposition to him, but I suggested that I would perhaps have to resort to some means except by argument, and I would perhaps have to do it, and he assured me that he was well disposed toward the bill.

Q. You say your relations with your brother were resumed in 1897?

A. They were.

Q. Did you have any contract with him after that?

A. Along in 1899 or 1900 he offered me 5 per cent. of his commissions if I would again go in with him, but I have no recollection at the present moment whether it was in writing or verbally,
108 but I had an interview with Phil Thompson, who told me he was no longer interested in the claim, that he never could get my brother to reduce anything to writing and that he did not consider himself in the case any longer, and that he did not think my brother would reduce anything to writing with me, so on the

strength of that I wrote him a letter that I would accept his commission of 5 per cent.

Q. Feb. 23rd, 1900?

A. Yes, I think Feb. 23rd.

Q. What was the contract between you?

A. He employed me to carry out his wishes, his instructions, more than anything else, as he was not living in Washington then, I was not to lose any opportunity to become acquainted with as many Senators and members of Congress as possible, and try to influence them.

Q. Were you employed to render any legal service in this case?

A. Not to my knowledge. I had no legal knowledge to render.

Q. Mr. S. Prentiss Knut stated on examination that it was to take his briefs and give them to different members of Congress.

A. Mr. Knut never gave me a brief in my life, except those in that book, and he never gave me any brief to take to any Senator or Congressman.

Q. How long did you work under that contract?

A. Well I worked under that contract all through our friendly relations and nothing was said about the severance of our business connections. Our difference was on different lines; he never asked me to withdraw my service to him in the claim. I did all I could for it up to the time of its payment. I did not receive a letter dismissing me from it.

Q. What service did you perform under that contract?

A. I made personal solicitation of different members of the House and the Senate and outside parties whom I thought influential. A great many times you can find men who are not in Congress who have very much more influence than most men you can strike in Congress with legislators and Senators.

Q. Your employment was to influence legislators to obtain this claim.

A. That was my opinion.

Q. By personal solicitation?

A. That was what I did.

109 Q. Mr. Knut you say then that so far as any direct severance of your business relations between you and Mr. S. P. Knut there had been none.

A. So far as I know they are in effect still.

Q. Do you know how in 1892 the Knut claim came upon the omnibus bill, if so state.

A. Soon after the omnibus bill went to the Senate from the House I was at Frederick, Md., I heard the omnibus bill had passed the House. I went immediately to Washington, and went from the B. & O. depot direct to the Capitol and called on Senator McC. who is a personal friend of mine, to ask him did he know whether or not our claim was on the omnibus bill. He said he did not. I asked him would he go to the Committee on Claims to ascertain that with me, and if he would not to give me such assistance as he could to

have it placed on the omnibus bill. He said he very busy and rushed for time at that moment, but that he would give me a note to Senator Warren, who would serve me the same as if he were serving me himself. I took the note and went to the committee and met Mr. Warren, presented the note and we had quite a little chat I suppose half an hour or more, before I alluded to this business. Finally he asked me what he could do for me, and I told him what I wanted to find out. He called one of his clerks and asked where the omnibus bill was. It was handed to him and he told me that our claim was not on the omnibus bill, as it came from the House. I asked him what chance there was to have it put on. He told me he was thoroughly familiar with the Nutt claim. He asked me what relation I was to Mr. Knut who called on him about it. I told him he was my brother. He stated that he had called up in company with a lawyer and they had discussed this claim, nor had he seen my brother. I asked him who the attorney was. At the time he told me he could not recollect the name of the attorney I wanted to know with a view of calling on him, as I was not — speaking temperately with my brother. He told me he could not inform me who the man was, and until I had spoken of it, he had not heard of the Nutt claim since it had been put on the omnibus bill in the preceeding session. He would pass the Nutt claim with the omnibus bill, and for me to rest assured that if the omnibus bill went through the Senate the Nutt claim would go through with it, and for me not to make any solicitation or do any work whatever in the Senate toward getting this omnibus bill through, for neither myself nor my brother to take any part towards helping in the Senate. As my brother had not been in evidence, from what the Senator told me, I did not take any means to reach him. He stayed away from the Capitol. He told me after the bill passed the Senate and was referred back to the House and if it was tied up there, and there seemed to be any doubt as to its passage, it would be well enough then for me to use all the influence I could bring to bear towards getting the omnibus bill passed as a whole, losing sight of the Nutt claim as an individual. The bill did pass the Senate and went over to the House, where it was held up for quite a while. I made repeated trips to Washington stopping as much as a week at a hotel in order to sooth- over any objections that I might find to the bill, or that might get into the head of any friend of mine. The bill was finally sent to conference and it passed and became a law. The next day I called at the White House upon the President, who is a personal friend of mine, and who has visited me at my country place, and told him of my good luck in this bill of mine passing with the omnibus bill. He seemed to be as glad of it as I was myself. He assured me he thought all claims of that nature ought to have been settled before that.

Q. Mr. Nutt, there was some reference made in the testimony given by Mr. S. P. Knut to a gentleman named Read of Washington.

A. Mr. H. R. Read. Yes, Mr. Read is a very warm personal friend of mine. He is supposed to be worth four or five million- of dollars. He is a stock holder in the B. & O.

Q. I will ask you whether or not you ever tried to get Mr. Knut to employ Mr. Beltzhoover to do lobbying services on this claim?

A. I have not.

Q. Mr. S. P. Knut said in his deposition that you tried to get him to employ Mr. Donaldson to do lobbying work, is it true.

A. It is not a fact. Mr. Donaldson is very well known to me. Anything that Mr. Donaldson could have done towards helping this claim, he would have done without any payment. He is a personal friend of mine. I think I said to Mr. Donaldson on my own account that when this claim was paid we were going to cele-

111 brate it by a big supper or something of that kind.

Q. Some reference has been made to a proposal by you in a letter to your brother to pay some person, name not given, one thousand dollars, who was he?

A. I really could not tell the name of the party. This party was suggested to me by a very influential attorney. Mr. Jones might assist me in the name of the man as the attorney was a great friend of his. He suggestdd that if I wanted a wide awake good lawyer I might employ this attorney and he would send him to me at the hotel. This party was visiting Washington at the time. In a few days this gentlemen called on me. In the meantime I wrote my brother with a view to getting his approval if I decided to employ him, but I found that he could not do anything but what I could do myself, and I did not employ him.

Q. Mr. Nutt, do you know what position or attitude Mr. John Nutt occupies in regard to this suit?

Objected to.

A. In October of this year when I was in Natchez, my brother John Nutt said whereas he was not set out in the defense of this suit he wanted me to consider he was fighting it as much as I was myself, and he agreed in my presense with Messrs. Brown and Martin and Clinton to retain them and pay them in defense of this suit.

Q. October 1902?

A. Yes that he had never been willing to pay 33⅓ per cent as I had known all along.

S. PRENTISS KNUT recalled.

Q. Mr. Knut, you have testified as to the report made in this case in the 56th Congress by Senator Stewart, that report is in evidence and that the item reported to the Court of Claims went upon the omnibus bill which became a law. I wish you would explain why it was that you did not go to see Senator Warren in the 57th Congress before the time the omnibus bill came over from the House.

Objected to as incompetent and irrelevant.

A. The number of bills before the committee of the Senate is
112 so enormous that long ago that committee adopted a rule that a bill reported favorably in one Congress be taken as reported back from their committee without any further to do. It goes without saying that unless something new had turned up that would change the views of the committee as expressed in a former Congress where it had been fully discussed, and it agrees to place it in the omnibus bill, it was to go through, and the only thing for me to do was to be there attending, in case something had developed that had not been considered by the prior Congress and to defend the claim.

Testimony of S. Prentiss Knut and Calvin Nutt, witnesses testifying at this hearing in before mentioned cause.

(Signed) W. P. S. VENTRESS, *Chancellor.*

113 The following exhibit was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows, to-wit:

This is to witness that I have associated S. Prentiss Nutt with me in the prosecution of the claim of Julia A. Nutt, widow etc. against the United States, the condition being that he is to procure all the testimony necessary to support said claim and in consideration of such services on his part I agree to pay to him the one third part of the fee which may be paid to me by the said Julia A. Nutt for prosecuting said claim, but should I obtain no fee from said claim then this obligation to be null and void.

Washington, D. C. Aug. 10, 1882.

(Signed) J. W. DENVER.

On the reverse side of said exhibit I find endorsed the words to-wit: Contract with J. W. Denver. Exhibit # 1 to deposition of S. P. Knut.

The following exhibit was filed to the testimony of S. Prentiss Knut, which is on words and figures as follows, towit:

Statement of Account between Julia A. Nutt and J. W. Denver, July 19, 1884.

Amount of Treasury draft this day collected.....		$35,556.17
Amount of fee per contract (one third).....	$11,852.06	
Amount of balance due J. W. Denver on agreement of June 1, 1874 and this day credited thereon and delivered to Mrs. Nutt	1,300.48	
		13,152.54
		$22,403.63

Amount due Julia A. Nutt and paid her according to her directions as follows:

By draft No. 74589 of National Metripolitan Bank of Washington, D. C. on National Park Bank of New York, payable to the order of Mrs. Nutt	$15,000.00	
By draft of same on same bank payable to the order of A. C. Britton	3,500.00	
By cash deposited in the National Metripolitan Bank to the credit of Julia A. Nutt	3,903.63	
		$22,403.63

114 Received Washington D. C. July 19, 1884, of J. W. Denver, per A. St. C. Denver, the sum of $22,403.63, as above stated in full settlement of the amount due me on Treasury war warrant No. 2359 of this date, after deducting from the amount of said warrant all fees for services in prosecuting the claim to date, and the balance due him by me on agreement of June 1, 1874, as per statement, this settlement not to affect the further prosecution of my claims for more, in accordance with my agreement of May 18, 1874, on the terms therein set forth.

(Signed) JULIA A. NUTT.

Statement of Account.

Agreement of Julia A. Nutt with J. W. Denver for payment of $1,500, with interest at 10 per cent. per annum from June 1, 1874.

Principal of agreement note dated June 1st, 1874	$1500.00
Interest to May 9, 1881, 6 years, 11 months, 8 days	1040.83
Principal and interest to May 9, 1881	$2540.83.

Credits:

March 25, 1875. By cash	$100.00	
March 20, 1876. " "	137.50	
Dec. 10, 1877. " "	167.70	
Dec. 9, 1878. " "	150.00	
May 9, 1881. " "	1000.00	
		1555.20
Balance due May 9, 1881		985.63
Interest on $985.63 from May 9, 1881 to July 19, 1884, 3 years, 2 months, 10 days		314.85
Amount due July 19, 1884		$1300.48

Paid this item as per statement annexed on the other side of this paper, and receipt thereof acknowledged and agreement delivered &c.

(Signed) J. W. DENVER,
Per A. ST. C. DENVER.

On the reverse side of this exhibit I find endorsed the following: Settlement with J. W. Denver. Exhibit #2 to deposition of S. P. Knut.

115 The following exhibit was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows to wit:—

WASHINGTON, D. C., *Feb.* 2, 1887.

Mrs. Julia A. Nutt, Natchez, Miss.

DEAR MADAM: As a matter of course you know that Prentiss and myself have had some matters of business, and in talking the other day about an adjustment, he suggested that he would take your claim and attend to it before Congress, the departments or the courts as might be necessary. This of course I would not do without your consent. The lawyer owes certain obligations to his client which he cannot relieve himself from without the consent of the client, nor can he transfer his obligations ordinarily to another party without the consent of the client. But even did I have the full power to act in this case, remembering how much you were dissatisfied with Prentiss some time ago, I could not carry out his suggestion without first consulting you. You are aware that my brother and myself have separated, and have no further business in common. It has always been my desire to help Prentiss along as much as I could, and I think he has now the prospect of doing pretty well. I do not see any present prospect of doing anything with your claim, for it has been impossible to get the chairman of the committee to take any action on it whatever, but possibly something may be accomplished next Congress. Now, I do not know certainly that the agreement with Prentiss above referred to will be made at all, but I would like to know at your earliest convenience if it would be satisfactory to you to have it made, and if you would authorize it.

Letters from home report all in usual health there. My son Matt is at school at Georgetown, where I have just been to see him; Mary is at St. Martins school; Willie is putting in his time on the farm and in the bank; Kate talks of coming on here shortly. Mr. Romback's health is very precarious. Mrs. Denver is very much confined with her domestic duties, so much so that she can scarcely get away from home.

Allow me to congratulate you on the birth of another
116 grandchild. I hope all are well. With kind regards to all the family, I remain,

Yours respectfully,
(Signed) J. W. DENVER.

On the reverse side of said exhibit, I find the following:
J. W. Denver, Feb. 2, 1887. Exhibit #3 to deposition of S. P. Knut.

The following exhibit was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows*m* towit:

WASHINGTON, D. C., *March* 21, 1887.

Mrs. Julia A. Nutt, Natchez, Miss.

DEAR MADAM: Prentiss and myself had a settlement and I turned over your case to him, so that he hereafter will correspond with you about it. This I did in accordance with the permission you gave me in your letter of he 22nd ult., also in a letter to him on the same subject. I sincerely hope it will turn out all right and that you will ultimately get what is justly due you.

You express a regret at the estrangement between myself and brother, and hope that in time it will come out all right. I have no such hope. No one could regret this trouble more than I do, and I would have made great sacrifices to avoid it, but he seems determined to do everything to aggrevate it. It is unnecessary to go into any explanation, and perhaps the least said about it is soonest mended.

As to *ahwt* you say about Kate you perhaps know a good deal more than I do.

With kindest regards to you and all the family, I remain,

Yours respectfully,

(Signed) J. W. DENVER.

On the reverse side of said exhibit I find the following endorsed:
J. W. D. M'ch 21, 1887. Exhibit #4 to deposition of S. P. Knut.

117 The following agreement was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows, to wit:

This agreement between James W. Denver in the city of Washington, District of Columbia, of the first part, and Julia A. Nutt, executor of the estate of Haller Nutt deceased, of the coty of Natchez and State of Mississippi, of the second part.

Witnesseth, that the party of the first part agrees to take exclusive charge and control of a certain claim which the party of the second part holds against the Government of the United States for the use of property and for property of which the said Haller Nutt and his estate was deprived by the acts of officers, soldiers and employees of the United States in Louisiana and Mississippi in the years 1863, 1864 and 1865, amounting to one million dollars more or less, and to prosecute the same before any of the courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the departments of Government or before the

Congress of the United States, and before any officer or commission o convention especially authorized to take cognizance of said claim, o through any diplomatic negotiations as may be deemed best by hin for the interest of the party of the second part.

And in consideration therefor the party of the second part agree to pay the party of the first part a sum equal to 33⅓ per cent. of the amount which may be allowed on said claim, the payment of whicl is hereby made a lien upon the said claim and upon any draft money or evidence of indebtedness which may be paid or issued thereon.

This agreement not to be affected by any services performed by the claimant or other agents or attorneys employed by him. All expenses of printing, costs of court and commissioners' fees for taking testimony are to be charged to the party of the second part, and the party of the second part agrees to execute from time to time to the party of the first part such powers of attorney as may be necessary or convenient for the successful prosecution and collection of said claim.

No revocation of any authority conferred on the party of the first part by this agreement, or any power of attorney relating to the business covered by the same to be valid.

118 In witness whereof the part- of the second part has hereunto set her hand and seal, this eighteenth day of May A. D. 1874.

(Signed) JULIA A. NUTT. [SEAL.]

On the back of said exhibit I find endorsed the following.

I hereby transfer all my interest in the within agreement to S. Prentiss Nutt.

March 19, 1887.

(Signed) J. W. DENVER.

Agreement for fees. Julia A. Nutt with James W. Denver.

EXHIBIT # 5 TO DEPOSITION OF S. P. KNUT.

The following exhibit was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

In the settlement this day made between J. W. Denver and S. Prentiss Nutt, it is agreed by and between them that the said Denver shall and hereby does turn over to the said Nutt, all his right, title and interest in and to the claim of Mrs. Julia A. Nutt, exc. against the Government, the French spoliation claim of the estate of John Cox, deceased, and the claim of M. V. Dahlgren, adm. against the United States, and as to all other cases the said Nutt relinquishes and transfers to the said Denver all and singular the papers, documents and whatever else belongs to any or all of said

cases now in his, the said Nutt's possession, and all his interest therein.

This is not to release the notes heretofore given by the said Nutt to the said Denver, one dated July 20th, 1885 for $185.00, one dated Jan. 23, 1886, for 400.00 and one dated March 12th, 1887, for $827.75; but in regard to all other matters it is a full and final settlement, this day made and agreed to.

Washington D. C. March 19th, 1887.

(Signed) J. W. DENVER.
(Signed) S. PRENTISS NUTT.

On the back of said exhibit is the following, towit:—

EXHIBIT # 6 TO DEPOSITION OF S. P. KNUT.

119 The following exhibit was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows, to wit:

LONGWOOD, *Jan. 8th*, 1891.

DEAR PRENTISS: Your dispatch received last evening. I must congratulate you on your success, and I hope you will be equally as successful in Congress. I have not told anyone but Julia, she brought it from out town. I am glad that Rex does behave and is so —, I think Tody is very clean but we have to watch and see that he goes out, his ears are beautiful, he has the mange in his front shoulder, Julia is using some kind of s-ap, I think she washes him too much, he is very playful. Mr. David Dicks wants to train him, learn him some tricks, but we are afraid he may get stolen. Mr. Carpenter has a mule drowned in our front road pond, he is bogged in, I sent and wrote begging him to come and take it out, but he would not and would not send a hand to help, so we are doing the best we can to get him out, he is in the middle of the pond, the water is too cold to get any one to go in so we had to cut one of the oak trees in the pond by the *mod* to go out on. They have just come to say that — had got it out. It is costing me a good deal to get it out as I had to hire the men to do it. Perkins has been so impertinent that I have discharged him, as soon as he pays his leases he leaves the place. I don't know who I can get to take the land. When you get your money I hope you will buy the place. There is no one to attend to it. I am kept housed up, the Dr. says I must not come out, in meantime everything going wrong. We are having dreadful spell of weather raining and cold. Calvin told me he would supply me with groceries this year. I am to pay interest on the money, so I sent him an order a few days ago as we are out of everything and no money. When the cotton is sold I won't have money enough to pay my bills. I feel like giving up. T. T. Veazie is in Natchez, came out to sell Hampstead, she is going to take Harry and his wife back with her. Margeret Routh is still with us,

do you ever see Nannie Fenwick, she is in Wash'n with her daughter. The Dr. goes on for her in a few days. All join in love.

Your devoted mother,

(Signed) JULIA A. NUTT.

120 This exhibit is marked as follows, towit:

EXHIBIT #7 TO DEPOSITION OF S. P. KNUT.

The following Exhibit No. 8 was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit.

LONGWOOD, *June 24th*, '92.

MY DEAR PRENTISS: Yours of yesterday received. I am glad you think you will get a part of the claim through, that will be better than waiting, for the cotton money can come afterwards, but to get some money now is the most important for us all. My health is nothing but patched up. I can go for an hour or so, then I give down. This morning I had a bad turn, but it is wearing off a little and I won't have another for several hours. I have lost what appetite I had and have to take something to make me sleep at night so I get 4 or 5 hours sleep. This morning I was awake at four. Birtha has -nocked down a barrel also a box where I had 23 chickens & 1 hen, he killed them all, and he don't eat them but does it for the love of it. I have all the dogs washed every day with carbolic acid in it to keep doen flees and mange. Poor little Jamie has just had his hand mashed dreadfully, it is always some one of them that is getting hurt. We are all a sorry set, the weather is so hot, and these showers only make it hotter. I wish you would come home for you could attend to the gathering of the corn and hay for me. Bob took a bee hive last night, but there were so many bees in it will have to boil and strain it. Our tomatoes are beautiful. Margaret is still with us, but expect- to go again to Sligo. Mr. Prentiss and family are expected up next Tuesday at Sligo on a vosit. Mrs. Robert Stewart (the undertaker's wife) dropped dead yestarday from heart disease. All join in love to you. Water over everything.

Your devoted mother,

(Signed) JULIA A. NUTT.

121 The following Exhibit No. 9 was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows towit:

LONGWOOD, *Feb. 14th*, 1893.

MY DEAR PRENTISS: I received your letter of the 9th last evening. You must not get disheartened. Remember the first bill I ever got through Congress, we got it last night before they closed after one o'clock, so don't give up but work on to the last. I was fearful Mrs. Aldrich would injure her case, she is so vain and when

she gets a man to talk to she hates to let him go, and half the time she don't know what she is about. Miss Agness Shields and George Marshall's wedding announcement was received last evening; married Tuesday last. Annie Bowie and Matilda were out yesterday to see Mary who has been very sick since last Thursday, she is better this morning but very weak. I had to go to the Dr. for her. I have been in a great deal of trouble last week. I received notice from Britton & Koontz that a note I had given to the lightning rod man had been put there for collection. I did not have a cent, what to do I did not know, so at last I went and borrowed from Miss Alice Carlton $15, the bill was $25, but I had paid ten when the work was done. Now she has to have this money again the last of the month, she goes to buy her spring goods and she says she must have it. I will have to try and find some one else who can loan it to me, but who. Everybody is crying out hard times. I am still being annoyed with those people about Cloverdale. All join me in love.

Your devoted mother
(Signed) JULIA A. NUTT.

The following Exhibit #10 was filed to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit.—

LONGWOOD, *June 27th*, '97.

DEAR PRENTISS: Your letter has made me very sad for you as I know how you had depended upon this case. It is hard on you for you to have tried so hard to get it and you have had so little to live on and now to be in that large city without a cent owing so much money. It is dreadful, I lay and think at night
122 about you and wonder how it will all end, not only your affairs but mine, for my creditors are getting closer and I dread every morning to come not knowing how the day will end, but I pray and I trust that the Lord will be good to me and keep them quiet for a little while longer. If I could sell, but no property can be sold now, the county is ruined, at least the people are and how are we to get to some place we can live for here we can't live without some money and that we have not got, and don't know who has. Mrs. Boyd and Nannie were here yesterday. Mrs. Boys is nearly crazy with trouble, she says she has not a cent and can't get a cent. Mr. Britton has refused to let out a cent on any terms, says he is waiting to see how it is all going to turn out about the banks. I know you are in the same fix and no one can help. If I was only well and could do without servants, but I can't for I am helpless, and Mary is not much better. But I do wish you could come home, you could fair like we do and in the fall you would start again with renewed energy. I think the outlook for the claim is very blue and I am glad that you feel as you do about being willing to take the opinion of anyone that think they can help you, for I have no idea of listening to anithing that would — to take the claim from you or

of engaging anyone for all of that must come from you as you see fit, as you have charge of it. I think you mistake Julia, she only wants the claim and any way they will get it she thinks will be the best way to do, not that she wants you to give it up, but wants you to talk it over with Mr. Morris, who is willing on her account to help you all he can, so don't let your feelings be hurt, for if anything is said or done they don't mean to hurt you but help to get the claim, and Mr. Morris said he would do all he could, but he could not be the first to offer his advice without being asked, for as you have taken him out of it, he did not like to broach the subject, but would do all he could if he were asked, and I think said he would think of some one that you could get that would assist you, and that he would charge nothing for what he could do, so that is the way it stands. I leave it to you to think over. Mr. W. & —— with baby came up Saturday morning. He returned to Sligo, but Katie is with us for the week. Mrs. Denver has put the Gen.'s business in Mr. Morris' hands to settle up. With love and hope to hear from you.

Your devoted mother,
(Signed) JULIA A. NUTT.

Do all you can to get Calvin the fore-n position.

123 The following exhibit was filed as Exhibit # 11 to the deposition of S. Prentiss Knut, which is in words and figures as follows, towit:

PROSPECT HALL, FREDERICK, MD., *July 15th*, 1897.

MY DEAR PRENTISS: I am just returned last night from Washington and Balt. The Court of Claims adjourned some time ago for the summer without taking action in the Nutt case. Senators Hale & Wellington and others are making a big fight to get the Bowman claim and other war claims put on the deficiency bill. I saw Paul Jones and he said he thought there would be no doubt of the Nutt case being paid this coming winter. I only received your letter on my return last night, will try and see Voorheis before my departure from here on Monday for Halifax, N. S., c/o Morrison's hotel. We go by sea from Balto. to Boston on the St. Gleachester and from there to Halifax on the St. Olivette. My horses are doing fine and my crops are all good. I am very sorry to leave here. The little ones seem very happy. I am glad that your wife likes Natchez, but am sorry that you have had such a hot spell. The weather here has been perfecily grand, not a hot day yet. I expect you had better write some one in Washington to post you in regards to the movements of Congress; etc. I had an attachment run on bromo seltzer and the Purent Beach Co.'s property yesterday in the U. S. courts yesterday in Balt. for the amount of my investment due me by Jno. Waggaman. I shall give him a pretty hot fight yet.

Henry Wise Garnett died a few days ago. I shall go south in October. My case will be called in the supreme court at Jackson then. In the event the case is looked into in a non partesant view I shall win hands down, but if I am looked upon as an outsider I am done for. With love to all.

Y-r bro.

(Signed) CALVIN.

The following exhibit was filed as Exhibit # 12 to the deposition of S. Prentiss Knut, which is in words and figures as follows, towit:

SLIGO, *Jan.* 26, 1900.

DEAR PRENTISS: I have been hoping to see you in Natchez, may I ask as to your general condition and will you kindly state
124 "where you are at"? Unless you show up shortly I will have to change my name and join Lord Roberts, my mail is heavy with letters from your sisters asking for a settlement of the Longwood matter and as to the course you propose to pursue in pushing the claim. Last night I received a letter signed by your three sisters, stating that if you did not go at once to Washington and watch over their interests, they believed it would be best, for all concerned, to have you place the claim in other hands. They are advised by people who ought to know that unless the matter is pushed before the present Congress, the result may be fatal.

Please let me hear from you at your earliest convenience. Mrs. Williams joins me in kind regards for yourself and little one, and I remain as ever

Y'rs truly,

(Signed) JAS. C. WILLIAMS.

The following exhibit was filed as Exhibit # 13 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

SLIGO, *Nov.* 28*th*, 1900.

DEAR PRENTISS: Yours of the 25th to hand. I have received letters from Calvin, Miss Julia and Miss Mary—have not yet heard from Miss Lily—the first three are indignant and have expressed a desire that you retire from the claim and Longwood as well) I will take charge of the latter as soon as you can remove your effects. It seems to me that you can stop all this by making an exhibit of the documentary evidence that you claim to have recently discovered, showing that Miss Mary had no right to dispose of property to Mr. Geisenberger and myself. If you can convince us of the legality of the claim, it is probable that we can bring them to terms. In haste.

Yours truly,

(Signed) JAS. C. WILLIAMS.

125 The following exhibit was filed as Exhibit # 14 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

SLIGO, *Dec. 20th*, 1900.

DEAR PRENTISS: I have received papers from all your brothers and sisters requesting me to see that you vacate Longwood and to employ someone else in the prosecution of the claim—I have delayed doing anything in the matter as long as I could—now I suppose I must act as they request me to do.

I write this in haste hoping that you will get this at the time you expressed a desire to do.

Thanks for information as to Nichols claim.

Y'rs truly,

(Signed) JAS. C. WILLIAMS.

The following exhibit was filed as Exhibit # 15 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

SLIGO, *Feb.* 11, 1901.

MY DEAR PRENTISS: Your message received and tonight I send you "the whole thing." Sincerely hope you are correct and that you will be able to adjust matters with the "Rev." Where do you suppose his "flock is," when he spends his time chasing after claims in Washington?

I wrote him that you were att'y in the case, now in Washington, and suggested that he call on you. If there is a possibility of his doing any damage better handle him with gloves. In haste.

Y'rs truly,

(Signed) JAS. C. WILLIAMS.

It is agreed between counsel for complainant and respondents that the foregoing letter from J. C. Williams to S. P. Knut is a true copy of the original letter offered in evidence on part of complainant, marked Exhibit 15 to S. P. Knut's testimony, and that the same may be filed with the papers in the case in lieu of the original.

(Signed) CLAUD PINTARD.
(Signed) BROWN & MARTIN.

126 The following exhibit was filed as Exhibit # 16 to the testimony of S. Prentiss Knut, which is in words and figures as follows towit:

SLIGO, *March 11th*, 1901.

DEAR PRENTISS: Your letter of the 4th received last night—that the bill failed to go through was no surprise to me—all that we can now do I suppose is to cultivate a stock of patience and hope—I note what you say in regard to Miiss Mary and Longwood. I have received no intimation from any of the heirs as to any change

in their views since they sent the paper, a copy of which I enclose you, consequently that is the only guide for me to work by and I wish you would close this matter up at once. I have been censured already for letting matters drag along at Longwood as I did last year and I would not like the thing to be repeated this year. Miss Julia asked me to send her two pictures from Longwood and I went out last Monday to get them. Fitz let me in the house but he seemed so much disturbed over the idea of my removing anything without hearing from you, that I told him that I would not take the pictures until you came, or I could show him a letter from you—then, I supposed you would return in a few days—Your letter indicates that it may be several weeks before I see you, so please enclose me a letter authorizing me to take the picture, this will be a great relief to him I know. I am about ready to follow any plan that you may suggest in my dealing with the Rev. Mortimer—a shepherd without a flock no doubt grows weary and is obliged to meddle with the affairs of others in order to kill time—let us pray that time will kill him before he succeeds in doing our cause any injury. In haste.

Y'rs truly,

(Signed) JAS. C. WILLIAMS.

The following exhibit was filed as Exhibit #17 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

SLIGO, *April 29th*, 1901.

DEAR PRENTISS: I am obliged to govern my actions by what Calvin writes me—his letters to you are evidently intended
127 only for you he and all the others have informed me that unless you retire from the prosecution of the claim, they fear nothing will ever be recovered. I am told by Calvin that you said $5000 was about what you expected to realize on the payment as your fee, this, all are willing to guarantee you, should you succeed. You of course will understand from this that I intend to employ another attorney—have you decided whether or not you will stay at Longwood? Your sisters would like to know that you have done something to stop the damage to the house.

Yours truly,

(Signed) JAS. C. WILLIAMS.

The following exhibit was filed as Exhibit #18 to the deposition of S. Prentiss Knut, which is in words and figures as follows, towit:

SLIGO, *May 4th*, 1901.

DEAR PRENTISS: I am in receipt of yours of the 30th inst. and note that you say "And that furthermore, as to those you seem to represent from your apparent standpoint of view, you are not in line with the majority interest."

Replying to this feature of the note I would take the liberty of advising you that I represent, or believe I do, the estate of Haller Nutt and that any action I may take will be based on the belief that I am doing what is best for that estate—the information that I have inclines me to believe that you will never succeed in landing the claim—the other heirs besides yourself agree with me, and demand that I employ other counsel—I have resolved to ignore this demand no longer—even if it does cost me the lucrative position of administrator when you petition to the court for my removal, it is to be hoped for your good that a more favorable hearing will be given you than when you made the same petition proposition to Calvin.

If you will come to see me I will show you some of the matters that cause me to "insist" as well as the demand that had been made upon me.

Very truly yours,

(Signed) JAS. C. WILLIAMS.

May 7.—And his reply left no other course for me than to
128 proceed as outlined in former letter, and hope he would take nothing personal to himself &c. & asked him to leave matter in *statu quo* till hear from court. Also asked him to explain reference to Calvin.

May 8.—Write and ask him to espress his reason for violating my contract.

The following exhibit was filed as Exhibit # 19 to the testimony of S. Prentiss Knut, which is in words and figures as follows towit:

SLIGO, *July 19th*, 1901.

DEAR PRENTISS: When in town yesterday I "chanced" upon Judge Martin in Mr. Geisenberger's office, and we discussed your position—of course in our conversation I learned why you had decided not to take legal steps to prevent me from employing other attorneys—strange that you were so silent upon this subject! I have also recently received a letter from Calvin, which is not very complimentary to you. Judge Martin thinks as I have done all along, that there is no objection to your taking a sum to be agreed upon for your past services in the -vent of payment of claim, retiring from the management of the claim entirely, and owing to your other interest, rendering in a quiet way any assistance in your power to the lawyer that I may select in your place. You should in my opinion accept this, if you do not, I shall be forced to commence legal proceedings at once looking towards your discharge, please advise me as to your decision. In the matter of Longwood contract, I told Mr. G. that I would not require you to paint the entire house—only the roof—Please go in and sign.

The quit claim deed I held I filed for record yesterday.

Yours truly,

(Signed) JAS. C. WILLIAMS.

The following exhibit was filed as Exhibit #20 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

NATCHEZ, MISS., *July 19th*, 1901.

DEAR CADDIE: Yours dated this day received. I trust it will not be ill received but I will venture to suggest that you might display less venom in your communications without injuring the cause you are proposing to serve.

It was quite sufficient for me to say to you that after talking the matter over with the chancellor I was satisfied with his position, and would not now file the petition for your removal. Perhaps if I should conclude that it was best to do so I might be able to pursuade him that the prayer should be granted.

Your reference to a letter "from Calvin" is a matter of perfect indifference to me. Nothing he can write or say is worth any consideration. It is not at all probably that I can accept any proposition on the lines you suggest in reference to the claim, yet I shall be glad to receive any proposition you care to make and give it immediate consideration.

Lily goes to Mrs. Gibbs to raise and will start shortly. I shall probably take her on so that any action you may take about my removal &c. I would suggest be taken in that view.

The proposed lease is not what I agreed on in Wash'n and I cannot sign it. I know furthermore the terms sent you were sent without authority of those mostly interested and repudiated by one in Wash'n.

Very truly yours,

——— ———.

The following exhibit was filed as Exhibit #21 to the testimony of S. Prentiss Knut, which is in words and figures as follows, to wit:

NATCHEZ, MISS., *July 26th*, 1901.

MY DEAR JOHN: Caddie Williams died suddenly on Wednesday. Kate takes his remains to Ohio for interment. I rode down yesterday afternoon as soon as I heard of his death and Miss May had gone up to the embarkation. Kate will live hereafter in Ohio.

Under written instructions given last fall from all the other heirs coupled with his own opinion he was about starting proceedings in the courts to oust me from this claim. This is not only a personal attack on me but on my professional standing and character
130 which of course I have to defend. Self protection is the first law of nature, and my answer thereto is the pointing out the inherent weakness of the claim as justification for any seeming delay &c. and in the melee a whole lot will be brought out that ought to be kept quiet, and this must necessarily reach Wash'n and that ends the claim. Possibly all the other heirs can stand the loss to gratify their opposition to me which is personal only, and in the majority of instances, jealousy. You would be surprised to know the amount of the Cloverdale money that went for lawyers'

fees. In this next business thousands would be consumed and the claim killed, besides an injury to the name and prestige of the family that generations will have to pass before it is forgotten. Beyond any sentimental interests I am interested to the extent of one third of the claim as fee in which I know that I am safe as the courts will protect me; as well as to the extend of one sixth as an heir. With this interest at stake I am not going to sit down and be run over by Julia and Calvin who *who* don't know what they are doing except gratifying their own private jealousy and conceit. The lawyers' fees spoken of above should be saved, the adminidtrator's fees which would amount to at least over two thousand dollars should be saved, for the*ir* is nothing now for him to do except receive and pay it out, and the estate has to be defended against the claims of Carry Forsyth estate (and she left a will giving everything to her two aunts) and Haller's, who left his share equally to me and that woman.

My fees are for services already performed under written contracts and I must have my fees in order to carry out my cintracts to get the claim paid. The rest is in the future.

The claim was not an asset reduced to possession capable of being passed by will. If I am continued in control of the claim I can give the adm. all the legal advice necessary for him and will agree to defend it against the claims of the two estates referred to, charging only for actual costs, and a small fee to some local att'y I will associate with me here, if necessary, with the further proviso that if I lose and Haller's claim is good I will give my share back to the estate to be devided among the other heirs that are friendly to us. To carry this out there must be now appointed an adm.
131 who will be friendly to me. Can you act? You will have to come here *a*to qualify and give bond. It will save me a world of trouble to be appointed myself, and if the claim is not paid during the present Congress I will resign. It is for you to say, as I am satisfied that Lily and Sis. May will be, so study the matter over carefully and let me know. Understand my position to be this. I have too much at stake not to take every step possible for self protection. Already I see the support of Sis. May thrown on me, with the fair prospect of Lillie's and hers to come. I understand that James only gives her half of his salary now, and Julia's credit will run out.

If I am appointed I will not charge adm. fees and the extra att'y's fees will be small and I will distribute the money immediately, instead of having it tied up in court to be fought over and wasted even if it should ever be paid. I think the adm. is allowed a year within which to settle his accounts and hold up the money. In this instance there are no claims against the estate as all such are long since barred, and the only question will be simply to receive the money, pay my fees and then divide the balance equally among the heirs, *wo* whom it goes unconditionally to do with as each pleases

I am ready and expect to leave here Sunday morning, but if you telegraph that you will come down Monday I will wait.

Y'r aff. br.,

(Signed) S. P. KNUT.

The following exhibit was filed as Exhibit # 22 to the testimony of S. Prentiss Knut, which is in words and figures as follows, to-wit:

NATCHEZ, MISS., *July 26th*, 1901.

MY DEAR JOHN: Yours of yesterday is received. I had hoped from the tone of your letters that we could settle this matter of the claim as it ought to be settled but the spirit of your letter is evidently hostile to me and there is nothing for me to do but withdraw my propositions and await results.

You say "You know that since you have married you have given our claim but very little attention, of any." This shows how
132 utterly ignorant of the facts you are. I have given the claim every proper attention and challenge criticism of my conduct of it, which I say is the best that could have been given it. Since I have been married I have made no mistake, committed no error, and neglected nothing in regard to the claim, and no one with due regard to the successful ending of the same would or could have done better or different.

But the important thing is the appointment of a successor to Caddie Williams who died suddenly on Wednesday. On my return I will stop by and see you. In the mean time matters can rest where they are. I shall see that nothing is done here in my absence. It is absolutely impossible for me to stop by now. I expect to start Sunday for Owensboro.

The following exhibit was filed as Exhibit # 23 to the testimony of S. Prentiss Knut, which is in words and figures as follows towit:

LEOTA, MISS., 9/29/01.

MY DEAR PRENTISS: Your letter of the 27th just received, also a list of furniture in house at Longwood. As for trustee for sister Mary's I never have been asked to act by Julia or Lillie, but they wrote me at the death of sis- Mary that they wanted Mr. Flemming, so of course I will not have anything to do with it. Julia never would have consented to my being administrator of father's estate had it not been for Calvin. You wrote me that you would rent Longwood for $400 which letter I forwarded to Julia and said if she and Lillie wished to rent the place that she had better write you, in answer to same she said she had written Mr. Flemming and she would be out in Nov. to see that everything was packed up but did not say anything about coming here, although I would be very glad to see her or any of my brothers or sisters at any time. As to

Julia dictating to me regards the claim will not amount to any thing, for I expect to act in the matter as I see best for us all. On my return from Natchez I wrote Calvin, Julia and Lillie what I had agreed with you in regards of claim. It was satisfactory to Calvin but it did not meet with Julia's approval, but she did not object to anything I had done, but gave her opinion which she has a right to do.

133 I never have heard a word from Mr. Jenkins and I would like to get the matter of administration of father's estate settled so you will please see him and let us settle it at once. Hoping you will be up soon and bring the papers with you. Mary sends love. I remain.

Your affect. bro.,
(Signed) JNO. K. NUTT.

The following exhibit was filed as Exhibit # 24 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

LEOTA, MISS., 3 / 2 / 1902.

MY DEAR PRENTISS: Mary has been so very ill that I have not had the time to write you. I can't see but very little improvement in her. As for the bond can't I make same here in Washington Co.? It strikes me just so it is made in the State it ought to be good. Of course I can't make same in Natchez as I do not know any one there I would ask to go my bond.

Mr. John Parker of New Orleans writes me that he will see that my bond is made in New York city, in case I should need his assistance to call upon him.

I hope to hear good news from you soon about the claim although I can't say when I can leave here on a / c Mary's illness.

I will keep a lookout for that fellow in Washington & in case he should write me I will answer his letter as requested by you. I remain

Your affec. brother,
(Signed) JNO. K. NUTT.

The following exhibie was filed as Exhibit # 25 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

LEOTA, MISS., 4 / 26 / 1902.

MY DEAR PRENTISS: Mary has been so very ill that I have
134 not had the time to write you, she is better today than she has been for two months. I am glad you feel so much encouraged and hope you will succeed in getting our claim paid.

God only knows when I will be able to leave here. Of course I feel confident you or any of the family would not expect me to leave Mary in such a condition; she is improving and I think in about 10 days she will be able for me to leave her. I do not want you to think that I do not want to pay you one third for I believe teh

family will have to pay you as mother's agreement, all I want was a copy so I could show them. Calvin has written me that he is willing to pay you one third. Your fee will be paid at once. I will be govern- by your advice in regards Haller sister Mary and Carrie's wills; my only object in going to Washington is to have a talk with the balance of the family and will want you to be with me. I remain

Your devoted brother,
(Signed) JNO. K. NUTT.

The following exhibit was filed as Exhibit # 29 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

LONGWOOD, *June* 21, 1886.

DEAR PRENTISS: Your letters enclosing Emaline papers amd Pheby's all came same —, will attend to them as soon as it stops raining so I can get to town. It has been raining ever since Sunday week, everything is getting washed to pieces and the crops completely run over with grass, planters do have a hard time making a living. The paper you sent me to si-ne, I can't do it, I have tomany children the power and everything else * * * his hands. They are not willing for it, so don't ask. I once si-ned a paper for you, what is the matter that you don't use that, it was after you and Gen. L. Denver had made the agreement to share the fee when Gen. Eakin was here. I feel sure that Gen. King will never be returned to Congress they are going to bring out John Murdock from Lake St. Joseph, he is now in the legislature and he is a strong man. Calvin Bennett was here yesterday he says you asked him fifty per cent. and Calvin to pay all expenses. He says he told you he would not give that as the claim was small and he would not get for his share over 2 or 3 hundred doilars, as he has two susters, but he will be willing to give you a third as I am giving and pay the expense, so I think he wrote you that he would. I have seen Mrs. Aldrich, she says Mrs. Beck has taken her claim and given it to Mr. Thompson,—but Mr. Thompson had not answered her letter, and if she did not hear from him soon she would write to you. Some of that cotton that was taken from Lake Lee was the Millers' and the Londees' of New Orleans. Kate got the lion's share of that money, but I believe the heirs agreed that if she got anything from the Gov. she could take it, and they appear satisfied. Barr and Dunny were here yesterday also Mr. Ben Williams and Alex Postlewaite. Julia received a letter last week from Mr. M. but he does not write like he wanted to change his way of living, I don't think he wants to marry, he likes Julia and likes to hear from her, but I don't think he cares to go any further. L. S. was here last week, he is devoted but Julia has not accepted him, he was here five days, left last Friday, it rained all the time so he did not leave the place until the last day. Don't trust to our getting any plants, last winter was so severe that everyone lost them. My magnolia fiscati

is dead and all that I know around here flowered poorly and on * * * and look badly. There was a great destruction last winter *amount* plants and trees. Mary will be at home on Thursday night. Corrinne H. is a lettle better. All join me in love.

Your devoted mother,

(Signed) JULIA A. NUTT.

Julia has answered Mr. M.'- letter and wrote a very nice letter to him she has invited him out so she can't do any more. The Stantons of Brandon Hall give a large party tomorron night. Julia is going with Bouie, Barr & Dunnie and Nannie Boyd, they have engaged the R. R. to take the party out. Gentlemen pay for the ride.

The following exhibit was filed as Exhibit # 30 to the testimony of S. Prentiss Knut, which is in words and figures as follows, towit:

136 (Copy.)

Under and by virtue of an agreement for fees made between Julia A. Nutt, exr. and J. W. Denver, of May 18, 1874, and transferred to me Mar. 19, 1887, a copy of which accompanies this, I hereby agree in the matter of the account stated of said claims made by the Quartermaster General, wherein $256,884.05 *was* awarded said Julia A. Nutt, exr. and $35,256.17 paid by the United States on account, leaving due $221,327.80, to pay to Mr. M. F. Morris, for legal service in the Court of Claims and on appeal to the Supreme Court of the United States, a sum equal to ten per cent. of whatever judgment may be obtained and paid in a suit against the United States to be instituted in the Court of Claims for said balance. And I hereby give said M. F. Morris a lien on any fees of mine in said claim to protect him in payment of said service.

(Signed) S. PRENTISS NUTT.

Washington, May 10th, 1887.

The following exhibit was filed as Exhibit # 39 to the deposition of S. Prentiss Knut, on cross examination, which is in words and figures as follows, towit:

Sargent Prentiss Knut, attorney at law.

NATCHEZ, MISS., *Apr.* 25, 1901.

MY DEAR CALVIN: I am sorry the expressage on the magnolias was so much, but I did not think they would live without the dirt. Two that I planted here from the bunch are doing nicely. You ought to appreciate that extra Longwood soil—it's worth its weight in gold.

I did not brong horses here. I left them behind and cut down all expenses possible. Have sold the surviving carriage horse, and

have now only Natchez and Old Dick, my two wheeler and an ordinary old buggy. I sent the phaeton to town for sale. Wish you could get me a sale for it at $250 delivered in Wash.

Don't let Isabel worry about Lily, she will do all right here till I have to leave for Wash'n and it is time enough to worry then. I don't see how you can throw up your hands and hold off from
137 the claim after having done so much and I hope you will reconsider. Sis May seems in a quandary about leaving Lillie. I can do all O. K. without her, and at the same time will be very glad to have her. The matter is entirely with her. Guess she won't leave till Julia goes on and runs her out.

My man Fitt is now up. I expect Lil by Sunday.

Y'r aff. br.

(Signed) S. P. KNUT.

The following exhibit was filed as Exhibit #40 to the deposition of S. Prentiss Knut, on corss examination, which is in words and figures as follows, towit:

Sargeant Prentiss Knut, attorney at law.

LONGWOOD, *Apr.* 12, 1901.

MY DEAR CALVIN: I arrived last evening and found Joseph pretty badly off. He has been down now in bed over 5 weeks and at this writing his fever is over 104 degrees. His wife and five children are in perfect health. I cannot even imagine where he got this typhoid. I wrote Miss Pier to be ready and today wired her to start with Lily, coming via Ohio River boat. I also wired Sis May so she may come too, as I found a letter from her saying she would if I said the word.

The magnolias are all right and I will try and get them off tomorrow. I will repack I think. Have enough dug up to send John some too I guess.

C. P. Williams had another stroke of paralysis and last week another fire that burnt up *ever* their clothes. Now Anna is down one week. I concluded to leave all my horses in Ky. and do no training, so I am now at no expense up there.

You must go slow in whatever you do in regard to the claim. I hope your good reasoning will cause you to let matters alone. As soon as I know as a fact that Caddy is going to employ another att'y I am going to ask the court to set aside his appointment as adm'r and appoint some one else, I believe I can show the court his course, if he pursues that course will be so detrimental to the best interest of the claim that such a motion will be allowed.
138 It is possible that the court will not interfere; but if it does not, then it is my belief that such a course will postpone the payment of the claim a number of years, if it does not kill it entirely. It has taken me five years to overcome the effects of Beltzhoover's attack, instituted thereto by Arthur Denver, and now

that there is no opposition awake to it in Congress, it is suicidal to call in outsiders. You had better turn to the Congressional Record for 1895, page 1933, and read that debate. Those facts dug up again would kill us, and it is senseless to invite the attack. If O let go there are those in Congress who know all about this and I don't believe they can be kept down. I shall resort to every legal process to stop the employment of and engaging another att'y, but if I fail, and if by chance the claim is paid, I shall stop the payment of any fees to him under the decision of the Supreme Court in the case of Trist *v.* Chiles, 24 Wall.

There is no threat meant or implied by me. My interests in the claim are too great to be jeopardized as I see the attempt being made. I have 575 cases in the Court of Claims on the line of ours and over 200 not in the court. In them are several thousand different individual claimants. I have claimants, or rather clients, like John to deal with constantly. I don't blame him, for he is where he cannot be properly informed. That he does not understand when informed is his misfortune. My experience in such cases is to let his excitement peter out. But with Julia it is a case of conceit and that all consuming passion on her part to boss. Her ignorance is as much a misfortune as is her thick headed obstinacy. If I have to bring the matter of removing Caddie into the courts, all the heirs will have to give their testimony. I know Sis May and Lilly will not then stand by such a course as he would pursue, and every other one will be broken down under cross examination. There are $90,000.00 at stake. The estate of Halier Nutt as existing in the claim and until paid out belongs to the court and the adm'r is only an officer or servant of the court, and the court is not going to permit that done which would injure the estate. A better cause must be shown to the court for supplanting me than the mere prejudice of certain individual members of the family, tho' it is always desirable to have an att'y who is acceptable to all.

139 The claim was never nearer payment than right now. No such claims were paid by the last Congress, had any been paid ours would. In the Congress before the last a lot were paid in the omnibus bill. I made three trips to Washington to get ours in that bill. Both the chairman of the Senate and House committees, who knew all that was in the Beltzhoover speech told me flat footed and most pointedly that tho' their effeort to get these claims was a despairing one and could not and should not be loaded down with a great big claim open to such an attack and which would kill the whole bill, and if I attempted to force it in or on the bill the explosion & exposure would be by them made. Such was the condition of affairs then, and that now is all allayed and smoothed over & if you all will just be quiet and let things alone the claim will go right along with the other claims and be paid. You may talk to all the people you know in either the House or Senate, but none of them know what I do, and though their advice may be generically good,

specifically it cannot be, as they do not know all the facts. Mr. Morris is a most able lawyer in his line, but getting legislation through is not his line, but even so the case is clearly before him as I have stated it will show him the correctness of my position.

Every one is entitled to his honest opinion, and if you think some one else could the better get the claim paid it is your privilege and we won't quarrel over it, only I must be allowed the same privilege. I am honest in my opinions. I certainly have all the facts on my side.

I hope Elise is all right again.

Y'r aff. bro.

(Signed) S. P. KNUT.

The following exhibit was filed as Exhibit No. 41 to the testimony of S. Prentiss —— on cross examination, which is in words and figures as follows, towit.

NATCHEZ, MISS., *May 1st*, 1901.

MY DEAR LILLIE: I suppose Sis May is on her way home, at least I have not heard from her, but we are looking for her.

I write this letter to you as a warning about the claim. Caddy has served notice on me that instructed thereto by all the heirs he has dismissed me as attorney and will employ another. I have remonstrated and if he persist shall go into court and ask that he be set aside as administrator, and pending that be enjoined from committing waste. If he persist then good bye to the claim, it will be years before any of it is paid, perhaps never. This is all Julia's doings. In her ignorant conceit she is about to ruin the family if she succeeds. I have a letter from ma on this very subject & Julia & Morris, wherein she states in no mistaken terms that she has not and never will take the claim out of my hands. None of these claims were paid last Congress. Morris had something like it, and he got left, as we all did. Ours won't stand debate and investigation. Let it alone and it is bound to go through with the others; interfere now and there — enough in Congress who know its weakness to kill it. I have them appeased and all opposition at rest, but kick me out and I am without the power to prevail. Do as you please but receive the warning from me that you must expect to live without the help of the claim if you press it.

I have hundreds of other claims, and it remains for my own family among a few not sufficient to name to repudiate me. I have given years of my life to this claim & made no end of sacrifices & it is a real pity to see the beneficiaries so foolishly persist in ruining themselves. I can stand it, but can they?

I hope the children are well. Lily arrived the picture of health. They are stopping temporarily at Aunt Carrie's. Hadn't Merrit's

pony better be sold. He is getting old and can't be of any service to me.

Y'r aff. bro.,
(Signed) S. P. KNUT.

The following exhibit was filed as Exhibit # 42 to the testimony of S. Prentiss Knut on cross examination, which is in words and figures as follows, to wit:

141 OWENSBORO, KY., *Feb.* 26, 1900.

MY DEAR CALVIN: Your letter of the 23rd inst. is just received. It has taken you about three months to write it. My presence has been imperatively demanded here now, has it been absolutely necessary in Washington. There is no more chance of doing anything with the house now than heretofore; not so much as later on. I know everything that is going on. Our best chance is for an omnibus bill, to start in the House and then go int*i* the Senate. If the House takes up such a bill, then we are safe. Next is by a separate and private bill. It would not be difficult to get that thro' the Senate, but near impossible in the House. Some people who do not understand matters raise a great clamor, & I say to keep them quiet, let the thing go on in the Senate. My plan has been to hurry thro' the Senate when I came on & then bring all forces to bear in the House.

The printed brief under cover of blue cover in closet in Jones' library explains the case enough for you to work on till I come. The findings themselves are printed and are enough to base a report on. I enclose herewith bill to get Money or Sullivan to introduce. It will hardly go, but is basic. Gen. Stewart has taken charge of claim heretofore but he is cranky and has not confidence of Senate. Go with Isabel to call on Mrs. Stewart. She is a good and loyal friend of mine. She will appreciate your call. Go to the Capitol and talk with all the Senators and Members you can and get their views. John Kean on Com. on Claims is — friend. McComb writes he hasn't time, but it would be best to have him take case if possible.

I don't mind promising the $1000 to the party you refer to, but it would be best to consult Jones about him, if you can't well p*i*t it over till I come. There are so many crooks and turns in our case that there is a chance of doing more harm than good if you make a mistake in taking in the wrong people. The decision of the circuit court here in the matter of Lily's will is an immense relief to me. I have no doubt but that the court of appeals will sustain the opinion. I have some matters connected therewith that will hold me, when I will start.

Fitt writes me the rains are playing the devil with Long-
142 wood, & takes all his time to follow up. I wish I could get out of the whole business, and I wish you and John would consult as to what is best to be done. Love to Isabel.

Y'r aff. bro.,
(Signed) S. P. KNUT.

The following exhibit was filed as Exhibit # 43 to the testimony of S. Prentiss Knut on redirect examination which is in words and figures as follows, towit:

THE ARLINGTON,
WASHINGTON, D. C., *February* 23, 1900.

S. P. Knut, Esq., Owensboro, Ky.

MY DEAR PRENTISS: I have seen Jones on several occasions in regard to the claim and find that he knows no more about it than I do, and I have suggested to him yesterday that he had better write you the facts and get you to draw up such a brief or bill as you want reported, and send it to him at once. There is no reason why this bill should not get under good headway this winter. So if you will attend to this at once I think we can accomplish something. I am ready to do whatever I can and will accept your commission of 5 %. I am advised here by some very strong parties that there is a certain man here who could render us wonderful assistance in working this claim through Congress. I have not met the party yet, but he is to be brought to the hotel to see me within a day or two. I wish you would authorize me to agree to pay him on the payment of the claim $1,000 out of your fees. John sent your letter to Boston and they sent it to me. I simply told John that you had suggested to me and that I was at work under the advisement of your attorney here, but it seems he did not understand what was told him.

We are stopping at the Arlington, and I shall be very glad if you will push this matter right along, or if you could come yourself that would be much better. We do not want to make any mis-
143 take at the outset with this claim, and I think we had better understand thoroughly what we are to do, so we can talk advisedly on the subject. I am a little nervous, hence the typewriter.

Affectionately your brother,
(Signed) C. R. NUTT.

The following exhibit was filed as Exhibit # 44 to the testimony of S. Prentiss Knut on re-direct examination, which is in words and figures as follows, towit:

GREENVILLE, MISS., *July* 20, 1902.

Nutt administration.

Mr. S. P. Knutt, Greenville, Miss.

DEAR SIR: Writing you further on the line of my letter of July the 7th after our conversation today in regard to the proceedings taken by you against John K. Nutt, administrator of the estate of Haller Nutt, I beg to say, John Nutt does not care personally to resist the payment of your fee, but desires to be fully protected when paying the same by having the court adjudicate as to the reasonableness of your fee. He is not however willing for any claim to

be made for advances made by you to the estate, or interest thereon. If you will dismiss the proceedings which you have instituted in Adams county, Mississippi and in Washington seeking to tie up the money of the estate, he will not make any claim for damages against you on account of the institution of said proceedings, and will file an answer to your petition as per copy enclosed, provided that you do not make against the estate any claim for money alleged to have been advanced by you, or interest thereon; in the event that your claim of 33⅓ per cent. is allowed; that is under no circumstances are you to recover as attorney's fees more than 33⅓ per cent. If this is satisfactory you can advise me; and if it is not satisfactory and you are not willing to do this, John Nutt will take whatever steps he sees proper to take in regard to resisting your claim.

Yours truly,
(Signed) LE ROY PERCY.

Accepted
S. P. K.

144 *Final Decree.*

And afterwards towit on the 19th day of Febryary A. D. 1903, the following final decree was rendered in this cause, which is in words and figures as follows towit:

In the Chancery Court of Adams County, Mississippi.

S. PRENTISS KNUT
vs.
JOHN K. NUTT ET AL. } 1726.

This cause coming on for hearing by consent of all parties hereto before the chancellor in vacation, and the chancellor having fully advised himself in the premises, and being satisfied that the contract of Mrs. Julia A. Nutt, executrix of the estate of Haller Nutt, deceased, with General Denver for the prosecution of a claim of said estate against the Goveer-ment of the United States, and upon which complainant's cause of action is based, is violative of the United States statute laws, and being further of the opinion that complainant in the prosecution of said claim under said contract before the Congress of the United States in procuring and attempting to procure appropriations for the payment thereof, did procure personal solicitations to be made of members of Congress of the United States in bahalf of said claim, and for the reasons stated, is not entitled to the relief prayed for in his petition, doth order adjudge and decree that complainant's petition be and the same is hereby dismissed at

his cost for which let execution issue. Ordered, adjudged and decreed, this 19th day of Feb'y, A. D. 1903.

W. P. S. VENTRESS, *Chancellor.*

Therefore petitioner excepts to the ruling of the court in rendering the decision and tenders his bill of exceptions, which he prays may be signed, which is accordingly done.

Dated and signed the 28th day of February 1903.

W. P. S. VENTRESS, *Chancellor.*

145 And afterwards towit, the following petition for appeal, on the 4th day of March A. D. 1903, was filed with the clerk, which is in words and figures as follows, towit.—

In the Matter of the Estate of HALLER NUTT, Deceased.

S. PRENTISS KNUT
vs.
JOHN K. NUTT, Adm'r *d. b. n. c. t. a.*, & JULIA NUTT, CALVIN R. Nutt, Lilly Ward, & Elizabeth and Mary Firsythe.

Petition of S. Prentiss Knut for an Order Directing the Administrator to Pay Fee for Obtaining Claim Against U. S. Government.

S. Prentiss Knut, petitioner, feeling himself aggrieved at the decree rendered by the chancellor in the above styled cause in vacation, prays an appeal to the supreme court from said decree, this 28th February, 1903.

S. PRENTISS KNUT,
By CLAUD PINTARD AND
R. E. CONNER, *Solicitors.*

And afterwards, towit, the following order was filed by the clerk, which is in words and figures as follows, towit:

STATE OF MISSISSIPPI,
Adams County.

Chancery Court.

In the Matter of the Estate of HALLER NUTT, Deceased.

S. PRENTISS KNUT
v.
JOHN K. NUTT ET ALS.

S. Prentiss Knut, petitioner in the above styled cause, having prayed an appeal to the supreme court from the decree rendered

by the chancellor in vacation on the 19th day of Feb. 1903. It is ordered that the appeal be granted upon petitioner executing bond in the penalty of $500.00, with two or more good and sufficient sureties to be approved by the clerk of this court, or said bond to be signed by some good surety company as surety.

Ordered and decreed 28th February, 1903.

W. P. S. VENTRESS, *Chancellor.*

146 STATE OF MISSISSIPPI, *Adams County.*

Know all men by these presents, that we, S. Prentiss Knut, principal, and the United States Fidelity and Guaranty Company of Baltimore, Md. sureties, are held and formly bound unto John K. Nutt, administrator, *d. b. n. c. t. a.* of the estate of Haller Nutt, deceased, in the sum of five hundred dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, our executors and administrators, jointly and severally, firmly by these presents, signed and dated this the 28th day of February A. D. 1903.

The condition of the above obligation is such that whereas on the 19th day of February 1903 a decree was rendered by the chancery court of Adams county, State aforesaid, against the said S. Prentiss Knut, and S. Prentiss Knut has prayed for and obtained an appeal returnable to the next term of the supreme court aforesaid.

Now if the said S. Prentiss Knut shall pay and satisfy all the costs of appeal in case the decree be affirmed, then this obligation to be void, otherwise to remain in full force and effect.

S. PRENTISS KNUT,
By CLAUDE PINTARD, *Ag't & Att'y in Fact.*
U. S. FIDELITY & GUARANTY CO.,
By R. J. METCALF, *Ag't & Att'y in Fact.*

I approve the above bond and security thereon.

JOHN F. JENKINS,
Chancery Clerk.

March 5th, 1903.

147 *Agreement of Colicitors.*

STATE OF MISSISSIPPI, *Adams County.*

Chancery Court.

In the Matter of the Estate of HALLER NUTT, Deceased.

S. PRENTISS KNUT
vs.
JOHN K. NUTT, Administrator.

It is agreed between R. E. Conner & Pintard & Ratcliff, solicitors for S. Prentiss Knut, petitioner in the above styled cause, and Jas.

A. Clinton and Brown & Martin, solicitors for John K. Nutt, adm'r *et als.* that Exhibit "E" to S. P. Knut's petition, the original Exhibits 26, 27, 31, 32, 33, 34, 35, 36, 37, and 38, to S. P. Knut's evidence, and Exhibit "A" to John S. Blair's deposition, and other printed matter offered in evidence by S. P. Knut may not be inserted in the record, but may be sent up to the supreme court with the record, and to be taken as a part thereof as fully as if copied therein.

Witness our signatures this — day of March A. D. 1903.

R. E. CONNER,
PINTARD & RATCLIFF,
JAS. A. CLINTON,
BROWN & MARTIN, *Sols.*

148 STATE OF MISSISSIPPI, }
County of Adams. }

I, John F. Jenkins, clerk of the chancery court in and for said county and State, do hereby certify that the within and foregoing 174 pages contain a whole, true and correct transcript of the record of the pleas, proceedings had and done, and documentary evidence and oral testimony taken in open court, before the Honorable W. P. S. Ventress, chancellor, in and for said county and State, in vacation, December 1902, in a certain cause and contest *In re* the estate of Haller Nutt, deceased—S. Prentiss Knutt, *vs.* John K. Nutt, administrator, *et als.*, numbered #1726 on the general docket of said court.

And I further certify that the following exhibits accompanying this transcript, as per agreement of counsel, March 1903, (see page 174 of this record) are the same exhibits offered in evidence in this cause at its special sitting.

Index to Original Exhibits—Printed Matter.

Report of the United States Senate	Exhibit E
Certified findings of the Court of Claims (J. S. Blair)	" A
Evidence before Court of Claims	" 26
Petition of executrix to Congress	" 27
Evidence before Court of Claims	" 28
Amendment to bill before Congress	" 31
Petition S. P. Knut to Committee on Claims	" 32
Opinion Supreme Court	" 33
Bill in Congress	" 34
Mr. George's amendment to bill	" 36
Bill in Congress	" 37
Congressional Record	" 38

Certified copies of Records of House of Representatives, constituting a package of documents about three inches thick fastened together and not numbered.

Two (2) certified copies—typewritten—of U. S. Senate Journal.

149 And I further certify that the bond on page 173 is the original appeal bond filed in this case on March 5th, 1903, all of which transcript appears from the records and dockets of said court and files of papers now in my office.

Given under my hand and the seal of this court this the 19th day of March A. D. 1903.

[SEAL.] JOHN F. JENKINS, *Clerk.*

150 The State of Mississippi to the sheriff of Adams county, in said State:

You are hereby commanded to summon Calvin R. Nutt, Julia W. Nutt, Lillie Nutt Ward, Lizzie Forsythe and Mary Forsythe, or James A. Clinton, Brown & Martin and Reed & Brandon, appellees or their attorneys in fact or of record, if to be found in your county, to appear before the supreme court of the State of Mississippi at the capitol in the city of Jackson, in the county of Hinds and State aforesaid on the 20th day of April A. D. 1903, then and there to answer the appeal of S. Prentiss Knut, from a decree of the chancery court of the county of Adams in said State, rendered against said appellant on the 19th day of February A. D. 1903 in vacation of said chancery court in favor of appellees dismissing appellant's petition for fees in legal services, and have then there this writ.

Given under my hand and the seal of said chancery court at my office in Natchez, Miss., and issued this the 23rd day of March, A. D. 1903.

JOHN F. JENKINS,
Chancery Clerk.

Sheriff's Return.

Executed March 23rd 1903 by delivering to Jas. A. Clinton and Richard F. Reed, of Reed & Brandon, in person a true copy of the above summons.

ALBERT L. HOWE,
Sheriff of Adams County,
By C. L. TILLMAN, *D. S.*

Filed in my office this 23rd day of March A. D. 1903.

JOHN F. JENKINS, *Clerk.*

151 The State of Mississippi to the sheriff of Washington county, in said State:

You are commanded to summon John K. Nutt, administrator of the estate of Haller Nutt, deceased, or Messrs. Percy & Campbell, of Greenville, Miss., appellee, or his attorneys in fact or of record, if to be found in your county, to appear before the supreme court of the State of Mississippi, at the capitol in the city of Jackson, in the county of Hinds and State aforesaid, on the 20th day of April A. D.

1903, then and there to answer the appeal of S. Prentiss Knut, from a decree of the county of Adams, in said State, rendered against said appellant on the 19th day of February A. D. 1903, in vacation, of said chancery court in favor of said appellee, dismissing appellant's petition for fees in legal services, and have there then this writ.

Given under my hand and the seal of said chancery court at my office in Natchez, Miss., and issued this the 23rd day of March A. D. 1903.

JOHN F. JENKINS,
Chancery Clerk.

Sheriff's Return.

Received March 25th, 1903.

W. E. HUNT, *Sheriff.*
HARVEY MILLER, *D. S.*

Returned executed this 25th day of March 1903 by delivering to R. B. Campbell, member of the firm of Percy and Campbell, attorney of record of John K. Nutt, administrator, a true copy of the within writ

W. E. HUNT,
Sheriff Washington Co., Miss.

STATE OF MISSISSIPPI, }
Adams County. }

The following named appellees whose attorneys reside in Adams county Miss., were this day summoned and this is a duplicate of that writ for the same cause of action., towit: Calvin R. Nutt, Julia W. Nutt, Lillie Nutt Ward, Lizzie Forsythe and Mary Forsythe, or their attorneys Jas. A. Clinton, Brown & Martin and Reed & Brandon. This March 23rd, 1903.

JOHN F. JENKINS,
Clerk of the Chancery Court.

Filed in my office this 6th day of April A. D. 1903.
JOHN F. JENKINS, *Clerk.*

152 In the Supreme Court of Mississippi.

S. P. KNUT
v.
JOHN K. NUTT, Adm'r, ET AL.

Assignment of Error.

First. The court erred in holding that the contract between Mrs. Julia A. Nutt, executor, and General Denver, under which the applicant claims, was violative of the United States statute laws, and that for that reason appellant was not entitled to recover.

Second. The court erred in holding as a matter of fact that the applicant procured personal solicitation to be made of members of Congress of the United States in behalf of the claim described in the petition.

Third. The court erred, even if this be true, in holding that it defeated the right of the applicant to recover.

Fourth. The court erred in not rendering a decree in favor of the appellant for ⅓ of the amount shown to have been received by the executor by appropriation of Congress.

Fifth. The court erred in dismissing the petition of appellant.

CATCHINGS & CATCHINGS.

153 Supreme Court of Mississippi, October Term, A. D. 1903

S. P. KNUT
v.
JOHN K. NUTT, Adm'r *d. b. n. c. t. a.* } 10896.

MONDAY, *December* 7, 1903.

This cause having been submitted at a former term of this court on the record herein from the chancery court of Adams county and this court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order adjudge and decree that the decree of said chancery court rendered in this cause on the 19th day of February 1903, be and the same is hereby reversed. And this court proceeding now to render such decree as the court below should have rendered, doth order adjudge and decree that S. P. Knut is entitled to his prayer for 33⅓ per cent of the amount collected by the administrator, $89,993.83, in full for any advance made by him and all services, less any payments made and remand the cause for an account to be taken accordingly, and for order that any balance of this per cent. unpaid be paid to him by the administrator. It is further ordered, adjudged and decreed that the appellee do pay the costs of this cause in this court and in the court below to be taxed, etc.

154 777.

S. P. KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL. } 10896.

CALHOON, *J.:*

Section 3477 Rev. Stat. U. S. reads as follows, the italics being ours:

"All *transfers* and *assignments* made of any claim upon the United States, or any *part* or *share* thereof, or *interest therein*, whether abso

lute or conditional, and *whatever may be the consideration* therefor, and all *powers* of *attorney*, orders or other authorities for *receiving payment* of any such claim, or any *part or share* thereof, shall be absolutely *null and void*, unless they are freely made and executed in the presence of at least *two attesting witnesses, after* the allowance of such claim, the ascertainment of the amount due, *and the issuance of a warrant* for the payment thereof."

Mr. Knut petitioned the chancery court to cause John K. Nutt, the present administrator of the estate of Haller Nutt deceased, to pay him thirty-three and one third per cent. of $89,993.83, recently received by this administrator from the United States Government, as his contingent fee for services as attorney at law under a written contract, with which he is in privity as assignee of it, made between one Denver and Julia A. Nutt, then executrix of Haller Nutt, on May 18th, 1874. In an amended petition he asks that if he be not entitled under the contract, he be allowed $30,000 as the reasonable value of his services.

It is not to be disputed that, if Denver could have recovered, Knut can recover, this being the only contract.

Mr. Knut exhibits with his petition two papers, each dates May 18th, 1874, and each signed by the executrix. One puts in Denver's charge of the claim of about one million dollars, and says: "to prosecute the same before any of the courts of the United States, or before any of the departments of the Government, or before the Congress of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or through *any diplomatic negotiations as may be deemed by him best for the interests of the party of* the second part." (The executrix) The italics are ours. This paper then proceeds as follows, the italics being ours: "The party of the second part (the executrix)
155 agrees to pay the party of the first part a sum equal to 33⅓ per cent. of the amount which may be allowed on said claim, the peyment of which is *hereby made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be paid or issued thereon.*"

The other paper signed by the executrix on the same day, May 18th, 1874, is a power of attorney irrevocable, and in so far as pertinent, is as follows, the italics being ours:

"For me and in my name, place and stead, to prosecute a certain claim etc. etc. before any courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the department- of the Government, or before the Congress of the United States, or before any officer, commissioner or convention specially authorized to take cognizance of said claim, *or through any diplomatic negotiations and to collect the same* * * * and to *receipt and sign all vouchers*, and bonds of indemnity or appeal, and to *endorse all drafts and vouchers in my name*" etc.

This latter paper is attested by two witnesses, but the execution of both was about twenty five years *before*, and was not *after*, the

ascertainment of the allowance of the claim and the issuance of the warrant, as the statute requires, and so the power of attorney is void. However it does not appear that it was ever acted on, and the money was collected directly by the administrator. But because the power of attorney was void, it does not therefore follow that the contract in the first paper referred to, for the fee, was also void. The two are separable and the one may stand while the other falls.

The first question for consideration is whether the contract is void on its face. Very clearly it is not unless some special significance be attached to the words "or through any diplomatic negotiations as may be deemed by him best for the interest of the party of the second part."

What these words mean, no one connected with the litigation as counsel seems to know. Certainly this court does not know, but it cannot construe them to convey an illegal meaning. They may mean the mere diplomatic tact or courteous manner or bearing in dealing with objections in the disposition of the items of the claim, which would be the lawyer's duty. They may mean divers things proper and improper, and so the meaning must be attached to them on their face, which would be proper.

156 "Where a contract is capable of two constructions, the one making it valid and the other void, it is clear law the first ought to be adopted." A. & E. Enc. Law, 1st ed. vol. 3, p. 869 note; Clay *v* Allen, 63 Miss. 426; Merrill *v.* Melchoir, 30 Miss. 516; Watkins *v.* Riley, 47 Miss. 313. This question is therefore settled on general common law principles and by the express adjudication of our own courts.

So we conclude, on the face of the contract, that the court below erred in so much of the final decree as pronounces it void "as violative of the United States statute laws."

The validity of this contract is in no way disturbed by the case of Owens *v.* Wilkinson, Wash. Law Rep. vol. 30, p. 436. This case showed an agreement that the counsel should have an "*interest in said claim equal* to one half of the total amount *received* at the date of the settlement of said claim by the *accounting officers of the Treasury*," which is requested "to be paid to my said attorney." The contract was the assignment of an interest in the claim in direct contravention of the statute. In the case now before us the agreement is to pay counsel "a sum *equal to* 33⅓ % of the amount which may be allowed on said claim."

The difference between "an interest in" and "a sum equal to" seems a thin distinction at first glance, but when the reason for, and the language of, the statute are considered, it becomes broad and obvious.

The Government had no intent to interfere with the free transfers of interests in the affairs of men, except in cases where they interfered with the convenient dispatch of its own business. Its disbursing officers had been harassed by countless notices not to pay, and great numbers of writs of injunction against paying claimants,

by parties claiming to be assignees of all or part of the money in the Treasury for the disbursement on private appropriations by Congress. So it forbid "all transfers and assignments" of any claim "or of any party or share thereof" or "interest therein," and all "powers of attorney" etc. for "receiving payment unless made *after* the issuance of a warrant for the payment thereof." It determined that it would deal with the original claimant only and have easy book-keeping. The distinction is aptly and well stated in the opinion in the case of Owens *v.* Wilkinson, above referred to, in the words on page 440, as follows:

"For the distinction, though subtle, is well established, the one conveying an *interest in* the fund to be recovered, the other
157 being merely a *personal obligation*, the extent of which is to be *measured* by the amount of recovery."

Appellees here are not aided by Trist *vs.* Child, 21 Wall., 441. There the attorney filed his complaint in equity to enjoin the claimant from withdrawing his part of the money from the Treasury. His bill is based on a contract that he "should receive 25% of *whatever sum* Congress might allow," an- the *the* attorney got payment suspended by the disbursing officers by injunction and the money was in the Treasury when the case was decided by the Supreme Court. The court held that the agreement carried on its face the assignment in the fund in giving the attorney 25% of whatever sum Congress might allow; and this was enough to decide the case against the attorney.

But the court further found that the "contract," which is not set out in the record "was, on the part of Child, to procure the lobby service, of possible, the passage of the bill providing for the payment of the claim." In another part of the opinion it said:

The agreement in the present case was for the sale of the influence and exertions of the *lobby agent* to bring about the passage of a law for the payment of a private claim, *without reference to its merits*, by means which, if corrupt, were illegitimate" etc. In every case cited in that opinion the fact was that the original contract was in violation of the statute. The opinion in treating of Child's claim of a lien, though none was provided for in the contract, being illegal, could not support a lien, and says:

"The bill proceeds upon the grounds of the validity of the original contract and a *consequent lien* in favor of the complainant upon the fund appropriated."

It then shows the contract invalid, which, of course, destroyed any claim of lien as attorney in carrying it out, and then decides that the remedy, if any, was not in equity to enforce a lien, but at law for the breach of the contract. There is no parallelism between that case and this at bar. If there was we should fall in, in the conclusions we arrive at in this opinion, with the mass of later decisions of the U. S. Supreme Court and our own.

The decree of the court below, in the case before us, cannot be sustained on the ground that it states that complainant pro-

158 cured personal solicitations to be made to members of Congress in behalf of the claim. Complainant testifies that he did not, and one of the defendants who is interested swears generally that he did. The complainant having exhibited a valid contract and proved legitimate services, the burden of proof was on the defendants to show corruption. But aside from this, it is certain that Mr. Calvin Nutt, the only witness for defendants gives simply his opinion of what were proper personal solicitations, and in no instance states the facts of the colloquium in any interview with any Senator or Representative to enable a court to judge of its propriety. But suppose there were improprieties of this nature committed in carrying out the valid contract, is it therefore settled that complainant is to have none of the fruits?

The Government, having paid the money, has no concern in it, and on the facts here, we do not think defendants should have it all, free from obligation to complainant. Our own court is committed to this doctrine.

Fewell *v.* Surety Co. 80 Miss. 791; Howe *v.* Jolly, 68 Miss. 324; Gary *v.* Jacobson, 55 Miss. 207; Walker *v.* Jeffries, 45 Miss. 165; Gilliam *v.* Brown, 43 Miss. 659. See also Barry *v.* Capen, 151 Mass. 99, which last case seems directly in point.

Nearly all, of not all these authorities, and many others, are cited in the brief of counsel for appellant, to which the profession is referred.

Reversed, and decree here that S. P. Knut is entitled to his prayed for 33⅓ per centum of the amount collected by the administrator, $89,993.83 in full for any advances made by him and all services, less any payments made; and remanded for account to be taken accordingly, and for order that any balance of this per cent. unpaid be paid to him by the administrator. Costs of both courts to be taxed on appellees.

159 STATE OF MISSISSIPPI, }
Supreme Court. }

I, Geo. C. Myers, clerk of said court in and for said State, hereby certify that the foregoing 158 pages contain a true and correct copy of the record and proceedings in the case of S. P. Knut, *vs.* John K. Nutt, administrator, *et als.*, No. 10896, on the general docket of this court, as the same appears on file in my office.

I also certify that the record in the above case together with the original exhibits accompanying it, were used as a part of that certain cause styled Calvin R. Nutt *et als. vs.* S. P. Knut, No. 11304, on the general docket of this court, at the trial of the last named cause in this court.

Witness my hand and the seal of this court this 2nd day of July A. D. 1904.

[Seal Supreme Court, State of Mississippi.]

GEO. C. MYERS,
Clerk of the Supreme Court of the State of Mississippi,
By JAS. R. McDOWELL, *D. C.*

a Chancery Court, Adams County.

CALVIN R. NUTT ET ALS.
v.
S. P. KNUT. } No. 11304.

Filed April 15, 1904.

GEO. C. MYERS, *Clerk.*
J. R. McDOWELL, *D. C.*

1 *Transcript of the Record.*

Pleas and proceedings before the honorable chancery court of Adams county, State of Mississippi, Hon. W. P. S. Ventress, presiding chancellor, at March term thereof, 1904.

In re Estate HALLER NUTT, Deceased, with JNO. K. NUTT, Administrator *d. b. n. c. t. a.* C. 1726.

Be it remembered that heretofore towit: on the 23rd day of March A. D. 1904, being the 8th day of the March term of the honorable chancery court of said county, the following motion was filed with the clerk, which is in words and figures as follows towit:—

In the Matter of the Estate of HALLER NUTT, Deceased.

S. P. KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL.

Motion to refer the claim referred to and described in the petition herein, to John F. Jenkins, clerk of this court, to state an account of amount due in accordance with the prayer of the petition.

C. PINTARD,
R. E. CONNER,
Solicitors for Motion.

The clerk will set the above on motion docket.

C. PINTARD.
R. E. CONNER.

And afterwards on the 23rd day of March 1904, the following order of reference was filed with the clerk which is in words and figures as follows, towit:

In the Matter of the Estate of HALLER NUTT, Deceased. 1726.

S. P. KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL.

This matter coming on to be heard on motion to refer the claim of S. P. Knut for the amount due him in accordance with the provisions of a certain contract described and referred to in his petition herein to John F. Jenkins, clerk, of this court, as commissioner
2 to state an account of what is due and owing petitioner. It is ordered that said motion be sustained and that the same be referred to John F. Jenkins, clerk of this court, to state an account of what is due petitioner, and in stating an account said clerk shall allow petitioner 33⅓ per cent. upon the sum of $89,999.88, the amount received by John K. Nutt, as administrator of the estate of Haller Nutt, deceased, and shall charge petitioner with whatever amount has been paid him on account of said claim, and shall then allow petitioner interest at the rate of six per cent. per annum from the date when th- said S. P. Knut filed his petition herein upon the balance due; and said cler- chall make his report with all convenient speed.

Ordered the 23rd day of March 1904.

W. P. S. VENTRESS, *Chancellor.*

And afterwards, to wit: on the 23rd day of March 1904 the following report of John F. Jenkins, clerk, was filed with the clerk, which is in words and figures as follows, towit:

In the Matter of the Estate of HALLER NUTT, Deceased. 1726.

S. P. KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL.

The undersigned to whom was referred the claim of S. P. Knut against the estate of Haller Nutt, dceased, for the amount due him in accordance with the provisions of a certain contract described and referred to in his petition respectfully reports that he has stated said accoun- in accordance with the directions of this court, in the order of reference, and herewith reports as follows:—

Amount received by John K. Nutt, adm'r etc. from the United States Government for account of estate of Haller Nutt deceased..... $89,999.88
Am't due S. P. Knut, 33⅓ per cent. of above.. $29,999.96

Cr.

June 10th, 1902, am't paid S. P. Knut..... 10,000.00

$19,999.96

Int. on above amount at 6% per annum from 21 June 1902 to 23 M'ch 1904..... 2,106.46

Balance due S. P. Knut, this day..... $22,106.42

Respectfully submitted, JOHN F. JENKINS,
Chancery Clerk.

M'ch 23, 1904.

3 And afterwards to-wit: on the 23rd day of March 1904 the following final decree was filed with the clerk, which is in words and figures as follows, to-wit:

In the Matter of the Estate of HALLER NUTT, Deceased.

S. P. KNUT
vs.
JOHN K. NUTT, Adm'r, ET AL.

This case coming on to be heard this day upon the petition hereinbefore filed by S. P. Knut for the purpose of securing a decree directing payment to be made by him to the administrator *de bonis non c. t. a.* of the estate of Haller Nutt, of the account due him in accordance with the provisions of a certain contract described and referred to in his said petition and upon the answers of John K. Nutt, administrator as aforesaid, Calvin R. Nutt, Julia W. Nutt and Lillie Nutt Ward, and it appearing that in accordance with the mandate and judgment of the supreme court of Mississippi the said S. P. Knut became entitled, by virtue of said contract to 33⅓% of the sum of 89,999.88, recovered by him under said contract from the United States of America for an- on behalf of the estate of said Haller Nutt deceased as and from the date of the filing of said petition herein, together with 6% interest thereon, in accordance with the statutes of this State in such case made and provided, and this cause having been referred to John F. Jenkins, clerk of this court, as commissioner to state an account of what is now due and owing to the said S. P. Knut, in accordance with the said mandate of the supreme court now on file in this cause, and the said commissioner having reported that there is now due to the said S. P. Knut the sum of $19,999.96

as principal, and $2,106.46 as interest, making in the aggregate the sum of $22,106.42, and there being no exceptions filed to said report, it is

Ordered and adjudged that the said report be and the same is hereby confirmed.

It is further considered by the court and so

Ordered, adjudged and decreed that the said S. P. Knut is entitled to have and receive from the said *K*ohn K. Nutt, administrator as aforesaid, the said sum of $22,143.30, and it is

Ordered, adjudged and decreed that the said John K. Nutt, administrator as aforesaid, do pay to the said S. P. Knut the said sum of $22,143.30 with 6% per annum interest thereon from this date, out of the money in his hands received from the United States of America as aforesaid, for and on behalf of the estate of
4 Haller Nutt, deceased. It is further

Ordered, adjudged and decreed that the said administrator do pay all costs of this proceeding, including the costs of appeal hereinbefore taken by the said S. P. Knut to the supreme court of Mississippi, the same to be taxed against the shares of the said Calvin R. Nutt, Julia W. Nutt and Lillie Nutt Ward respectively. And the said Calvin R. Nutt, Julia W. Nutt and Lillie Nutt Ward, having in open court prayed an appeal from this decree to the supreme court, and the court being of opinion that the right of appeal is governed by section 55 of the Code of 1892, it is further ordered that said appeal is hereby granted and allowed, and this decree superseded, upon said appellants entering into an appeal bond in the sum of ten thousand dollars, conditioned according to law with sureties to be approved by the clerk.

Ordered, adjudged and decreed, this 23rd day of March 1904.

W. P. S. VENTRESS, *Chancellor.*

5 And afterwards, towit: the following agreement of counsel was filed with the clerk on the 1st day of April, A. D. 1904, which is in words and figures as follows, towit:

STATE OF MISSISSIPPI, }
County of Adams. }

In the Chancery Court.

In re Estate of HALLER NUTT, Deceased, on Petition of S. PRENTISS KNUT for Allowance of Attorneys' Fee, etc. No. 1726.

It is hereby agree- between the attorneys representing the said S. P. Knut and those representing Calvin R. Nutt, Lilly Nutt Ward and Julia W. Nutt, that on the appeal to the supreme court from the decree of the chancellor rendered March 23rd, 1904, in favor of said S. P. Knut for the sum of $22,105.46, all the evidence taken, and

all the pleadings filed in the original appeal prosecuted by said C. R. Nutt, Lilly Nutt Ward, and Julia W. Nutt, and the administrator, John K. Nutt, wherein the decree of the court below was reversed, shall be regarded as forming a part of the record in the present appeal.

BROWN & MARTIN,
Sols. for Appellants.
R. E. CONNER &
CLAUDE PINTARD,
Sols. for Appellees.

6 Know all men by these presents that we, Calvin R. Nutt, Lilly Nutt Ward and Julia W. Nutt, principals, and the United States Fidelity & Guaranty Company of Baltimore, Md., sureties, are held and firmly bound unto S. Prentiss Knut, in the sum of ten thousand dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly be these presents.

Witness our hands this 1st day of April 1904.

The condition of the above obligation is such that whereas on the 23rd day of March, 1904, there was rendered in the chancery court of Adams county, Mississippi, a decree in favor of said S. Prentiss Knut, and against John K. Nutt, administrator in the sum of $22,105.46, in the cause therein pending styled "In the matter of the estate of Haller Nutt dec'd., John K. Nutt, A. *d. b. n. c. t. a.*" from which decree the above bound C. R. Nutt, Lily Nutt Ward and Julia W. Nutt, as distributees of the estate of Haller Nutt, dec'd. prayed an appeal to the supreme court of the State:

Now if the said C. R. Nutt, Lilly Nutt Ward and Julia W. Nutt, shall pay all damages the said S. P. Knut may sustain by reason of suing out said appeal, and all costs in case said decree appealed from shall be affirmed, then this obligation to be void; otherwise to remain in full force and effect.

CALVIN R. NUTT.
JULIA W. NUTT.
LILLY NUTT WARD.
U. S. FIDELITY & GUARANTY CO.,
By R. D. METCALF, *Attorney in Fact.*
W. C. MARTIN, *Attorney in Fact.*

Filed in my office this 1st day of April A. D. 1904.

[SEAL.] JOHN F. JENKINS, *Clerk.*

I approve the above bond and the security thereto this 1st day of April A. D. 1904.

JOHN F. JENKINS,
Chancery Clerk.

7 STATE OF MISSISSIPPI, }
County of Adams. }

I, John F. Jenkins, clerk of the chancery court in and for said county and State, do hereby certify that the within and foregoing six (6) pages *is* a complete and correct transcript of the record and proceedings had and done before the honorable chancery court of said county at its regular March term A. D. 1904, in that certain cause entitled "*In re* estate Haller Nutt, dec'd S. P. Knut *versus* John K. Nutt, administrator, *d. b. n. c. t. a. et als.*, numbered 1726 on the general docket of said court, and the foregoing page numbered "6" is the original appeal bond in said appeal filed on the 1st day of April A. D. 1904. That the amount of costs accruing to the chancery clerk in the matter of this appeal is the sum of $6.40.

All of which transcript appears from the records and dockets of said court and of files and papers now in my said office.

Given under my hand and the seal of this court this the 12th day of April A. D. 1904.

[SEAL.] JOHN F. JENKINS, *Clerk.*

8 The State of Mississippi to the sheriff of Adams county, in said State:

You are hereby commanded to summon S. Prentiss Knut, or Claude Pintard or R. E. Conner, appellee, or his attorneys of record or in fact, if to be found in your county, to appear before the supreme court of the State of Mississippi, at the capitol in the city of Jackson, in the county of Hinds, and State aforesaid, on the 18th day of April A. D. 1904, then and there to answer the appeal of Calvin R. Nutt, Julia A. Nutt and Lillie Nutt Ward, from a decree of the chancery court of the county of Adams in said State, rendered against said appellants on the 23rd day of March A. D. 1904 of said chancery court, in favor of said appellee for twenty two thousand, one hundred and forty three & 50/100 dollars, and have there then this writ.

Given under my hand and the seal of said chancery court at my office in Natchez, Miss. and issued this the 1st day of April A. D. 1904.

JOHN F. JENKINS
[SEAL.] *Chancery Clerk.*

Sheriff's Return.

I hereby waive service of summons and copy of above appeal and enter appearance in supreme court for S. P. Knut, appellee.

CLAUDE PINTARD,
Solicitor for Appellee.

Filed in my office this 11th day of April A. D. 1904.
JOHN F. JENKINS, *Clerk.*

9 The State of Mississippi to the Sheriff of Washington county, in said State:

You are hereby commanded to summon John K. Nutt, administrator *d. b. n. c. t. a.* of the estate of Haller Nutt, deceased, appellee or attorney in fact or of record of to be found in your county, to appear before the supreme court of the State of Mississippi at the capitol in the city of Jackson in the county of Hinds and State aforesaid, on the 18th day of April A. D. 1904, then and there to unite in the appeal taken by Calvin R. Nutt, Julia A. Nutt and Lillie Nutt Ward, from a decree of the chancery court of the county of Adams in said State, rendered against said appellants on the 23rd day of March A. D. 1904, at the March term A. D. 1904 of said chancery court, in favor of said appellee, S. P. Knut, from which decree Calvin R. Nutt, Julia A. Nutt and Lillie Nutt Ward have prayed an appeal to the supreme court, which was granted. And have there then this writ.

Given under my hand and the seal of said chancery court at my office in Natchez, Miss., and issued this the 28th day of March A. D. 1904.

JOHN F. JENKINS,
Chancery Clerk.

[SEAL.]

Sheriff's Return.

Returned executed on the within named party John K. Nutt by giving him a true copy of this writ this the 1st day of April 1904.

J. H. CROUCH, *Sheriff.*

Filed in my office this 6 day of April A. D. 1904.

JOHN F. JENKIKS, *Clerk.*

10 In the Supreme Court of Mississippi, to March Term, A. D. 1904.

In the Matter of the Estate of HALLER NUTT, Deceased. No. 1726.

C. R. NUTT ET ALS., Appellants,
vs.
S. P. KNUT, Appellee.

Assignment of Errors by Appellants.

1st. The court erred in refusing to dismiss the petition of appellee and in rendering any decree whatever in favor of appellee against John K. Nutt, administrator *d. b. n. c. t. a.* of estate of Haller Nutt, dec'd.

2nd. If any decree whatever should have been rendered in favor

of appellee against John K. Nutt, administrator *d. b. n. c. t. a.* of estate of Haller Nutt, it should have been for the sum only of $22,106.46, and not for $22,143.30, as decreed by lower court.

Respectfully submitted, BROWN & MARTIN,
Counsel for Appellants.

Filed Ap'l 18 / 04.
GEO. C. MYERS, *Clerk.*
J. R. McDOWELL, *D. C.*

11 In the Supreme Court of the State of Mississippi.

CALVIN R. NUTT ET ALS., Appellants,
vs.
S. P. KNUT, Appellee.

Motion to Discharge Supersedeas Herein.

The appellee comes by his attorneys and moves the court to discharge the supersedeas allowed by the chancellor and issued herein for the following causes:

1. The decree appealed from was a money decree for the sum of $22076.49 and under section 49 of the Code of 18(2 the decree being a money decree could not be superseded except upon the condition that the defendant appealing therefrom execute a bond in double the amount of the decree or judgment appealed from, whereas in this case the bond given by the appellants is only in the sum of $10,000.

2. Because the chancellor or chancery court had no power or authority to direct the issuance of the writ of supersedeas herein upon condition that the appellants give bond only in the sum of $10,000.

3. Because even if the supersedeas was allowable under section 55 of the Code of 1892 as adjudged by the court below the bond must be conditioned under section 49, that appellant "will satisfy the judgment or decree complained of and also such final judgment as may be made in the case and all costs if the same be affirmed." The bond is not so conditioned.

CATCHINGS & CATCHINGS,
Attorneys for Appellees.

12 STATE OF MISSISSIPPI:

Supreme Court, March Term, A. D. 1904.

MONDAY, *April* 25, 1904.

CALVIN R. NUTT ET ALS.
v.
S. P. KNUT. } 11304. "M" 233.

This cause having been submitted on a motion of the appellee to discharge the supersedeas allowed by the chancellor in the court

below, and this court having sufficiently examined and considered the same, doth order that said motion be and the same is hereby sustained, and that the appeal taken in this cause be dismissed at the cost of appellants unless appellants shall within ten days file with the clerk of this court a supersedeas bond conditioned according to law in double the amount of the decree in the court below.

13 In the Supreme Court, March Term, A. D. 1904.

CALVIN R. NUTT ET AL. v. S. P. KNUT. } 11304.

Motion.

Come the appellants and move the court to correct the order rendered by it on the 25th day of April 1904, by expunging that portion of same which provised that appellants' appeal shall be dismissed unless they shall file a supersedeas bond in accordance with said order.

BROWN & MARTIN,
Sol's for Appellants.

14 STATE OF MISSISSIPPI:

Supreme Court, March Term, A. D. 1904.

SATURDAY, *April* 30, 1904.

C. R. NUTT ET ALS. v. S. P. KNUT. } 11304. "M" 237.

The court having sufficiently examined the motion of appellants to correct the order of this court entered on April 25, 1904, and being of opinion that said motion should be sustained, doth order that th-t portion of the order of this court entered on the 25th day of April 1904, "M" 233, sustaining the motion of appellee to discharge supersedeas, providing for dismissal of appeal herein in case supersedeas bond conditioned as therein stated be filed within ten days, be vacated.

It is therefore ordered by this court that unless the appellants herein file with the clerk of this court within ten days from April 25th, 1904, a supersedeas bond in double the amount of the decree in the court below, that the supersedeas granted by the court below be and the same is hereby discharged.

15 *Supersedeas Bond.*

Know all men by these presents that we, Calvin R. Nutt, Julia W. Nutt and Lily Nutt Ward, principals, and the United States Fidelity & Guaranty Company of Baltimore, Md., surety, are held and firmly bound unto S. Prentiss Knut in the full sum of forty four thousand two hundred and eighty six & 60/100 (44,286.60) dollars, for the payment of which sum of money well and truly to be made we hereby bind ourselves, our heirs, legal representatives and successors, jointly and severally, firmly by these presents.

In witness whereof we have hereunto set our hands and seals this the 4th day of May, 1904.

The condition of the above obligation is such that whereas, on the 23rd day of March, 1904, there was rendered in the chancery court of Adams county, Mississippi a decree in favor of the said S. Prentiss Knut and against John K. Nutt, administrator *d. b. n. c. t. a.* of the estate of Haller Nutt, deceased, in the cause therein pending styled "*In re* estate of Haller Nutt, deceased, John K. Nutt, A. *d. b. n. c. t. a.* numbered 1726 on the general docket of said court from which decree the above bound Calvin R. Nutt, Julia W. Nutt and Lily Nutt Ward prayed an appeal to the supreme court of the State, as distributees of said estate.

Now if the said Calvin R. Nutt, Julia W. Nutt and Lily Nutt Ward shall pay and satisfy the said decree complained of, and also such final judgment as may be made in the cause, and all costs, if said decree be affirmed, then this obligation shall be void; otherwise to remain in full force and effect.

CALVIN R. NUTT,
JULIA W. NUTT,
LILY NUTT WARD,
By their agents and attorneys in fact,
ERNEST E. BROWN &
W. C. MARTIN.
U. S. FIDELITY & GUARANTY CO.,
By R. D. METCALF, *Attorney in Fact.*
W. C. MARTIN, *Attorney in Fact.*

I approve the above bond and the security thereto this 4th day of May A. D. 1904.

JOHN F. JEMKINS,
Chancery Clerk.

16 Know all men by these presents, that we, Calvin R. Nutt, of Frederick in the State of Maryland, Julia W. Nutt, of Frederick, Maryland, and Lily N. Ward, of the city of Melrose, in the State of Massachusetts, hereby appoint Ernest E. Brown and William C. Martin, of the city of Natchez, in the State of Mississippi,

and each of them, our true and lawful attorney, and the attorney of each of us, and authorize them or either of them, for us and in each of our respective names, to sign seal and execute so as to bind us and each of us as principals, any bond or other obligation which may be required by the supreme court of Mississippi, or by the Supreme Court of the United States, in the matter of the writ of error sued out, or to be sued out of the Supreme Court of the United States by us, in the case in the supreme court of the State of Mississippi, entitled *In re* estate of Haller Nutt, deceased, being a suit brought by Sargent Prentiss Knut, against John K. Nutt, administrator of the estate of Haller Nutt, deceased, and others.

Witness our respective hands and seals this 30th day of April A. D. 1904.

CALVIN R. NUTT. [SEAL.]
JULIA W. NUTT. [SEAL.]
LILY NUTT WARD. [SEAL.]

Witness
GARRETT S. DE GRANGE
as to Calvin R. Nutt.
As to Julia W. Nutt
A. S. WORTHING, JR.
As to Lily N. Ward,
ETHEL M. DRIVER.

Filed May 5th / 04.

GEO. C. MYERS, *Clerk.*
J. R. McDOWELL, *D. C.*

17 STATE OF MISSISSIPPI:

Supreme Court, March Term, A. D. 1904.

MONDAY, *May 23rd*, 1904.

CALVIN R. NUTT ET ALS. *v.* S. P. KNUT. } 11304. "M" 267.

This cause having been submitted on a former day of this term on the record herein from the chancery court of Adams county, and the court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order, adjudge and decree that the decree of said chancery court rendered in this cause on the 23rd day of March A. D. 1904, be and the same is hereby reversed, and this court proceeding now to enter such decree as the court below should have entered, doth order, adjudge and decree that the appellee S. P. Knut, do have and recover of John K. Nutt, administrator, *de bonis non cum test-mento annexo* of the estate

of Haller Nutt, deceased, the sum of twenty two thousdna one hundred and six & 46 / 100 dollars. It is further ordered, adjudged and decreed that the appellants have and recover of the appellee S. P. Knut the costs of this appeal to be taxed etc.

18 CALVIN R. NUTT ET AL. v. S. P. KNUT. } 11304.

CALHOON, J.:

The first assignment of error is in these words.

1st. The court erred in refusing to dismiss the petition of appellee and in rendering any decree whatever in favor of appellee against Jno. K. Nutt adm'r *d. b. n. c. t. a.* of estate of Haller Nutt deceased.

We cannot consider this nor entertain the attempted appeal as to it, as we are without jurisdiction. It is an effort to re-litigate an adjudicated controversy.

Heretofore, in the same case, with the same parties, in the same court from which comes the present attempted appeal, the petition referred to in the foregoing assignment of error was dismissed and appeal taken. On that appeal Knut *v.* Nutt *et al.* docket No. 10896—35 So. R. 686—this court reversed that decision, sustained the petition of S. P. Knut, and ordered a final decree here as follows:

"Reversed and decree here that S. P. Knut is entitled to his prayer for 33⅓ per centum of the amount collected by the administrator ($89.993.83) in full for any advances made by him, and all services rendered *and remanded for account to be taken accordingly*, and for order that any balance of this per cent. unpaid, be paid to him by the administrator. costs of both courts to be taxed on appellees."

The final decree here according to this order, was entered on December 7th 1903, and the term expired March 6th 1904, and we are powerless now to change the law of the case pronounced at that term, even if we doubted its correctness, which we do not, so as to that, there can be, and therefore is no appeal pending. There was no motion for rehearing nor suggestion of error presented B. & A.'s Dig. p. 673 clause 49 *et seq.* citing 73 Miss. 463—46 Miss. 666—54 Miss. 621.

In accordance with the mandate of this court, the court below proceeded to do all it could do, and that was to have an account taken and order the balance to be paid by the administrator to S. P. Knut. In doing this there was on the face of the record in the present appeal manifest error, by clerical misprision or inadvertence no doubt, in that the decree was rendered for $36.88 too much. It apparently should have been for $22.106.46 but was for $22.143.30, and this slight discrepancy is the basis of the second assignment of error, which is well taken and for this the decree below is reversed

and we order a decree here for $22.106.46 against Jno. K. Nutt administrator *de bonis non—cum testamento annexo* of the estate of Haller Nutt, deceased, in favor of S. P. Knut, and that the costs of this appeal be taxed against S. P. Knut, the appellee.

19 UNITED STATES OF AMERICA,
State of Mississippi.

CALVIN R. NUTT ET AL.
v.
S. PRENTISS KNUT ET AL.

Petition for Writ of Error.

To the Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi:

The petition of Calvin R. Nutt, Julia W. Nutt and Lily N. Ward respectfully shows that on the 7th day of December, 1903, the said supreme court of the State of Mississippi rendered judgment in a certain cause therein, wherein your petitioners and one John K. Nutt, administrator of Haller Nutt deceased, were the appellees, and one S. Prentiss Knut was the appellant, wherein a certain decree which had been rendered in the chancery court of Adams county on the 19th day of February, 1903, was reversed and a decree was rendered adjudging that the said S. Prentiss Knut was entitled to one third of eighty nine thousand nine hundred ninety three and 83/100 dollars ($89,993.83) less whatever payments might have been made to him upon that account, and whereby said cause was remanded to the said chancery court for an account to be stated in accordance with the judgment of said supreme court, and for order to be made in and by said chancery court that any balance unpaid to the said S. Prentiss Knut thereupon, should be paid to him by said John K. Nutt, administrator; and afterwards, and on a second appeal in the same cause, on the 23rd day of May, 1904, such second appeal being prosecuted to the supreme court by these petitioners against the said S. Prentiss Knut, and the said supreme court entertaining said appeal, a further decree was rendered by the said supreme court, final in its nature, whereby a certain decree of the chancery court of Adams county, rendered on the 23rd day of March, 1904, was reversed and decree was rendered in and by said supreme court of Mississippi that said S. Prentiss Knut should have and re-
20 cover of the said John K. Nutt, administrator of Haller Nutt deceased, the sum of twenty two thousand one hundred six and 46/100 dollars ($22,106.46), all of which will appear by reference to the record and proceedings in said cause.

Petitioners further show that your petitioners are heirs and distributees of the estate of said Haller Nutt deceased, of which the

said John K. Nutt is administrator *de bonis non c. t. a.*, all of which will also appear by reference to the record and proceedings in said cause; and that the said administrator unjustly and wrongfully refuses to prosecute a writ of error from the said decree of December 7th, 1903, and of May 23rd, 1904, in said cause.

Petitioners further show that in said suit was drawn in question the validity of a certain written contract and power of attorney executed pursuant thereto, whereby the said S. Prentis- Knut claimed to be entitled to receive from said estate the sum of money so finally adjudged to be paid to him by the said administrator, as aforesaid, in and by the decrees of said supreme court and the validity of said written contract and power of attorney turned upon, and was challenged under and by virtue of the prohibition made by section 3477 of the Revised Statutes of the United States, and the decision of said supreme court was in favor of the validity of such contract and power of attorney and sustained the same as not being violative of said section.

And the decision of the said supreme court of the State of Mississippi was final and the said supreme court is the court of highest resort in said State.

Wherefore your petitioners — aggrieved and they pray for a writ of error, with citation and supersedeas, returnable into the Supreme Court of the United States, according to law.

And as in duty bound, they will ever pray, etc.

CALVIN R. NUTT.
JULIA W. NUTT.
LILY N. WARD.

21 STATE OF MISSISSIPPI:

Desiring to give petitioners an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition and in the assignment of errors by which it is accompanied, it is ordered that a writ of error be, and the same is hereby, allowed to the said court; and that the same be made a supersedeas, the bond in the penal sum of thirty thousand dollars ($30,000.00) also here with presented, being hereby approved.

In testimony whereof witness my hand this the sixth day of June, 1904.

A. H. WHITFIELD,
Chief Justice of the Supreme Court of the State of Mississippi.

[Endorsed:] 11304. Calvin R. Nutt, *et als.* pl'ffs in error *v.* S. Prentiss Knut *et al.* def'ts in error. Petition for writ of error, and order Filed June 6/1904 Geo. C. Myers clerk

22 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, of the State of Mississippi before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Calvin R. Nutt, Julia W. Nutt, Lily N. Ward and John K. Nutt administrator *de bonis non. c t. a.* of the estate of Haller Nutt, deceased, defendants and S. Prentiss Knut, plaintiff, wherein was drawn in question the validity of a certain written contract, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the de-
23 cision was in favor of such its validity, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Calvin R. Nutt, Julia W. Nutt, and Lily N. Ward as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the sixth day of June, in the year of our Lord one thousand nine hundred and four.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY,
Clerk of the Circuit Court of the United States in & for the Southern District of Mississippi.

Allowed by—

——— ———,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] 11304. Calvin R. Nutt *et als.* pl'ffs in error *v.* S. Prentiss Knut *et al.* def'ts in error Writ of error Filed June 6/ 1904 Geo. C. Myers clerk.

24 Know all men by these presents, that we, Calvin R. Nutt, Julia W. Nutt and Lily N. Ward as principals, and the United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto S. Prentiss Knut and John K. Nutt, administrator of the estate of Haller Nutt, deceased, or either of them, in the full and just sum of thirty thousand dollars, to be paid to the said S. Prestiss Nutt and John K. Nutt, administrator, or either of them, their certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our hands and dated this the 6th day of June in the year of our Lord one thousand nine hundred and four.

Whereas lately at a term of the supreme court of Mississippi, in a suit depending in said court between the said principals and S. Prentiss Knut, a certain decree was rendered against the said John K. Nutt, administrator, and the said Calvin R. Nutt, Julia W. Nutt and Lily N. Ward, having obtained a writ of error, and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to said S. Prentiss Knut and said John K. Nutt, adm'r, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington within 30 days from the date thereof.

Now the condition of the obligation is such that if the said Calvin R. Nutt, Julia W. Nutt and Lily N. Ward shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the obligation to be void; else to remain in full force and virtue.

CALVIN R. NUTT,
By E. E. BROWN, *Agent.*
JULIA W. NUTT,
By E. E. BROWN, *Agent.*
LILY N. WARD,
By E. E. BROWN, *Agent.*
THE UNITED STATES FIDELITY & GUARANTY CO. OF BALTIMORE, MD.,
By J. F. ROBINSON, *Att'y in Fact,*
By BEN H. WELLS, *Att'y in Fact.*

Sealed and delivered in the presence of
J. F. ROBINSON.

Approved by—
A. H. WHITFIELD,
Chief Justice of the Supreme Court of Mississippi.

Filed June 6, 1904,
GEO. C. MYERS, *Clerk.*

25 UNITED STATES OF AMERICA, *ss:*

To S. Prentiss Knut and John K. Nutt, administrator *de bonis non c. t. a.* of the estate of Haller Nutt, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Mississippi wherein Calvin R. Nutt, Julia W. Nutt and Lily N. Ward are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said John K. Nutt, administrator as aforesaid, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi, this sixth day of June, in the year of our Lord one thousand nine hundred and four.

A. H. WHITFIELD,
Chief Justice of the Supreme Court of the State of Mississippi.

Received in office June 7, 1904 Delivered for service to E. C. Yellowley deputy same day at Vicksburg.

Received this writ on June 7th 1904, and served the same on June 7th 1904, on Mess. Catchings & Catchings attorneys of record for S. Prentiss Knut, by handing a true copy to Oliver Catchings a member of the firm, in Vicksburg, Miss., and on John K. Nutt on June 8th 1904, by handing him a true copy at his residence in Washington Co. Miss.

EDGAR S. WILSON,
U. S. Marsha-,
By E. C. YELLOWLEY, *Deputy.*

Fees	8.08
Ex	2.25
	10.33

On this ninth day of June, in the year of our Lord one thousand nine hundred and four, personally appeared E. C. Yellowley before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Oliver Cathings a member of the firm of Cathings & Catchings attorneys for S. Prentiss Knut & a true copy of said citation to John K. Nutt.

E. C. YELLOWLEY,
Dep. Marshal.

Sworn to and subscribed the 9 day of June, A. D. 1904.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*
J. H. SHORT, *D. C.*

[Endorsed:] Entered No. 789 page 176. Calvin R. Nutt *et als.* pl'ffs in error *v.* S. Prentiss Knut *et al.* def'ts in error, Citation Filed June 11/04 Geo. C. Myers cl'k By J. R. McDowell D. C.

25½ I, John K. Nutt, administrator *de bonis non cum testamento annexo* of the estate of Haller Nutt, deceased, hereby decline and refuse to join in any appeal to the Supreme Court of the United States, by writ of error to the supreme court of the State of Mississippi, from those two certain judgments of the said State court rendered respectively on the 7th day of December, 1903, and the 23rd day of May, 1904—the first in cause No. 10896 on the general docket of said court, styled "S. P. Knut *vs.* John K. Nutt, adm'r *et al.*;" the second in cause No. 11304 on said docket, styled "Calvin R. Nutt *et al. vs.* S. P. Knut."

Witness my hand this 1st day of June, 1904.

JNO. K. NUTT,
Adm'r d. b. n. c. t. a. Estate of Haller Nutt, Deceased.

[Endorsed:] Filed June 15, '04. Geo. C. Myers, cl'k.

26 In the Supreme Court of the United States, —— Term, 1904.

CALVIN R. NUTT ET ALS., Plaintiffs in Error,
v.
S. PRENTISS KNUT ET AL., Defendants in Error.

Afterwards, to-wit, on the 6th day of June, 1904 before the justices of the Supreme Court of the United States at the Capitol in the city of Washington, come the said Calvin R. Nutt, Julia W. Nutt and Lily N. Ward, plaintiffs in error, by their and each of their attorney, Edward Mayes, and say that in the record and proceedings aforesaid there is manifest error in the particulars following, to-wit:

1. The supreme court of the State of Mississippi erred in rendered judgment and decree of December 7th, 1903, whereby the said written contract in controversy in this cause, and the said power of attorney executed pursuant thereto, were held to be valid and enforcible and not void because repugnant to the provisions of section 3477 of the Revised Statute of the United States.

2. The said supreme court of the State of Mississippi erred in rendering judgment and decree of May 23rd, 1904, whereby the said written contract in controversy in this cause, and the said power of attorney executed pursuant thereto, were held to be valid

and enforcible and not void because repugnant to the provisions of section 3477 of the Revised Statutes of the United States.

3. The said supreme court of the State of Mississippi erred in rendering the judgment and decrees of December 7th, 1903 and of May 4th, 1904, whereby the said written contract in controversy in this cause, and the said power of attorney executed pursuant thereto, were held to be valid and enforcible and not void because repugnant to the provisions of section 3477 of the Revised Statutes of the United States.

And the said Calvin R. Nutt, Julia W. Nutt and Lily N. Ward pray that the judgments and decrees aforesaid may be re-
27 versed, annulled and altogether held for nought, and that they may be restored to all things which they have lost by action of the said judgment and decrees.

EDWARD MAYES,
Attorney for Plaintiffs in Error.

[Endorsed:] 11304. Calvin R. Nutt, *et als.*, pl'ffs in error *v.* S. Prentriss Knut, *et al.*, def'ts in error. Assignment of errors. Filed June 6, 1904. Geo. C. Myers clerk.

28 STATE OF MISSISSIPPI, }
Supreme Court. }

I, Geo. C. Myers, clerk of said court in and for said State, hereby certify that the foregoing 27 pages contain a true and correct copy of the record of the proceedings had in this court in a certain cause styled Calvin R. Nutt *et als. vs.* S. P. Knut, No. 11304 of the docket of this court, as the same appear of record and on file in this office; and also the original petition for writ of error, writ of error, citation to U. S. Supreme Court, and assignment of errors on writ of error, and a copy of the original appeal bond, on writ of error, the original bond being on file in this office.

Witness my hand and the seal of this court, this the 2nd day of June, 1904.

[Seal Supreme Court, State of Mississippi.]

GEO. C. MYERS,
Supreme Court Clerk of the State of Mississippi,
By JOS. R. McDOWELL, *D. C.*

29 *Index to Original Exhibits—Printed Matter.*

To testimony of S. P. Knut & Exhibit "A" to John S. Blair.

Report United States Senate	Exhibit	E
Certified findings Court of Claims (J. S. Blair)	"	A
Evidence before Court of Claims	"	26
Petition of executrix to Congress	"	27
Evidence before Court of Claims	"	28
Amendment to bill before Congress	"	31
Petition of S. P. Knut to Committee on Claims	"	32
Opinion Court of Claims	"	33
Bill in Congress	"	35
Mr. George's amendment to bill	"	36
Bill in Congress	"	37
Congressional Record, Feb. 4th 1895	"	38

Certified copies of records of House of Representatives constituting a package of documents about 3 inches thick fastened together and not numbered.

Two (2) certified copies—typewritten—of U. S. Senate Journal.

STATE OF MISSISSIPPI, }
Supreme Court. }

I do hereby certify that the original papers as classified by the index hereto attached ought to be submitted to the inspection of the Supreme Court of the United States on the trial of this cause in that court, and I do consequently hereby direct that the clerk of this court shall make a safe and convenient package of the same and express them to the clerk of the Supreme Court of the United States to be so inspected on said trial, with the request of said clerk of the Supreme Court of the United States that he return all the original papers to the clerk of this court upon the final disposition by the Supreme Court of the United States if this cause.

Given under my hand and the seal of this court, this July 2, 1904.

[Seal Supreme Court, State of Mississippi.]

A. H. WHITFIELD,
Chief Justice Supreme Court of the State of Mississippi.

[Endorsed :] Filed July 2, '04 Geo. C. Myers cl'k, by J. R. Mc Dowell D. C.

30 *Index to Original Exhibits—Printed Matter.*

To testimony of S. P. Knut & Exhibit "A" to John S. Blair.

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STATE OF MISSISSIPPI, }
Supreme Court. }

I George C. Myers, clerk of said court in and for said State, hereby certify that the original exhibits set forth in the above list, and contained in the box with this certificate, this day sent by express to the clerk of the Supreme Court of the United States, under order of the chief justice of this court, and by agreement of counsel, are the identical exhibits used before this court at the trial of the two causes, towit: S. P. Knut *vs.* John K. Nutt, adm'r, *et als.* No. 10896, and Calvin R. Nutt *et als. vs.* S. P. Knut, No. 11304, both of said cases being appealed from the chancery court of Adams county, Miss.

Witness my hand and the seal of this court this 2nd July, 1904.

[Seal Supreme Court, State of Mississippi.]

GEO. C. MYERS,
Supreme Court Clerk of Mississippi,
By JOS. R. McDOWELL, *D. C.*

Endorsed on cover: File No. 19,440. Mississippi supreme court. Term No. 340. Calvin R. Nutt, Julia W. Nutt, and Lily N. Ward, plaintiffs in error, *vs.* S. Prentiss Knut and John K. Nutt, administrator *de bonis non c. t. a.* of the estate of Haller Nutt, deceased. Filed August 13th, 1904. File No. 19,440.

Office Supreme Court U. S.
FILED
DEC 30 1904
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. ~~340~~ 78.

CALVIN R. NUTT, JULIA W. NUTT, AND LILY N. WARD, PLAINTIFFS IN ERROR,

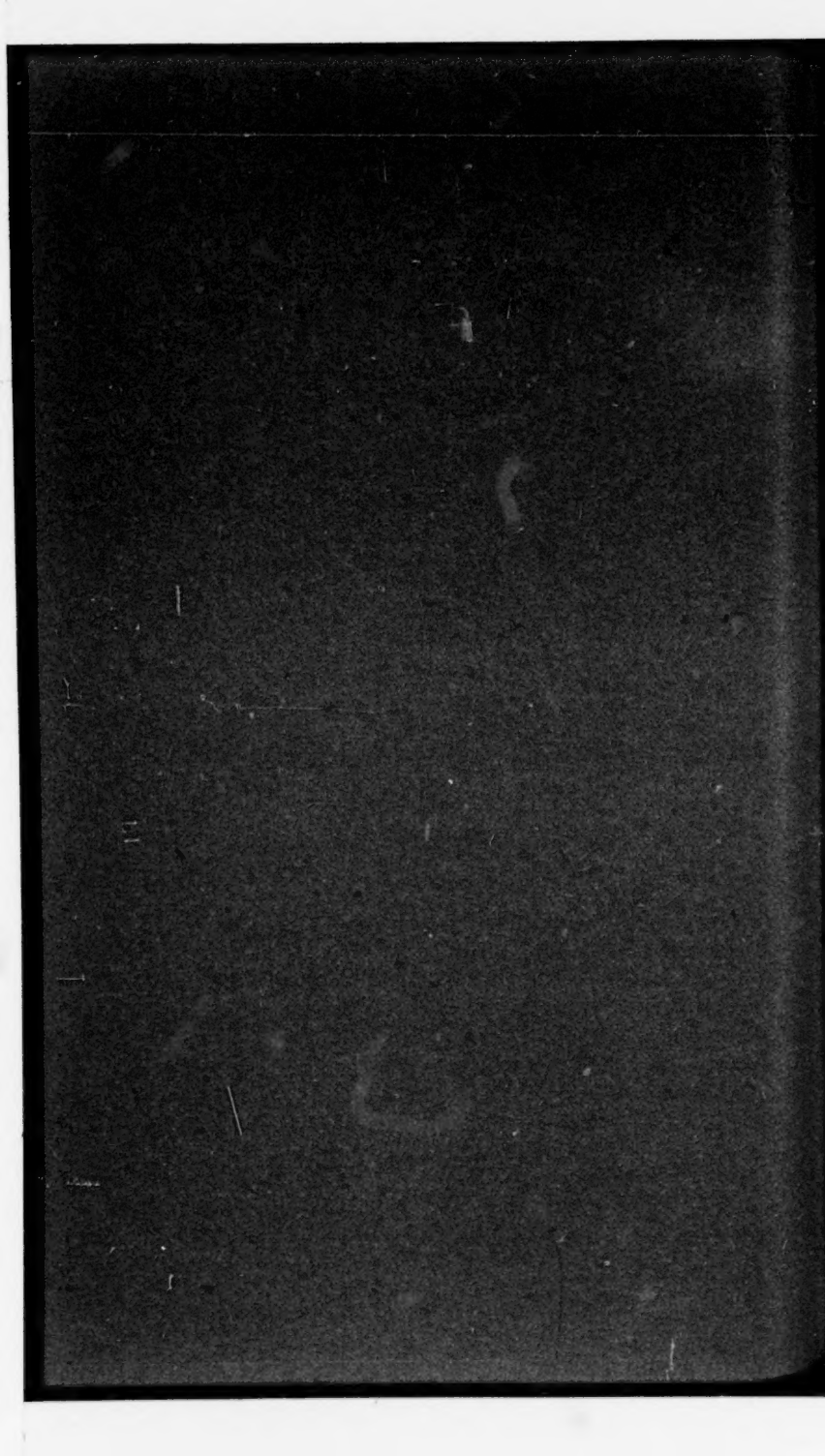
vs.

S. PRENTISS KNUT AND JOHN R. NUTT, ADMINISTRATOR DE BONIS NON C. T. A. OF THE ESTATE OF HALLER NUTT, DECEASED.

BRIEF FOR THE PLAINTIFFS IN ERROR ON MOTION TO DISMISS OR AFFIRM.

A. S. WORTHINGTON,
Attorney for Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 14178



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 340.

CALVIN R. NUTT, JULIA W. NUTT, AND LILY N. WARD, PLAINTIFFS IN ERROR,

vs.

S. PRENTISS KNUT AND JOHN R. NUTT, ADMINISTRATOR DE BONIS NON C. T. A. OF THE ESTATE OF HALLER NUTT, DECEASED.

Brief for the Plaintiffs in Error on Motion to Dismiss or Affirm.

ADDITIONAL STATEMENT OF THE CASE.

The Federal question involved in this case was first raised, so far as the record discloses, in the first final decree rendered in the chancery court of Adams county, Mississippi. That decree held that the contract upon which the action was brought was void because it "is violative of the United States statute laws" (106).

In the same decree it was adjudged that the complainant could not recover for the further reason that he "did procure personal solicitations to be made to members of Congress of the United States in behalf of said claim." The supreme court of the state reversed this decree and adjudged that the complainant was entitled to recover the thirty-three

and one-third per cent. claimed by him under his contract, "less any payments made," and remanded the cause to the lower court for an account to be taken accordingly (112).

Section 4352 of the Annotated Code of Mississippi, 1892, which was in force at the time this decree was rendered and is still in force, is as follows:

"WHAT OPINIONS TO BE IN WRITING.—In all cases set-"tling important principles, in cases to be remanded, and in "all cases where the judgment or decree of the court below "is reversed, the opinion of the supreme court shall be in "writing, stating the reasons upon which the decision is "made; and the opinion shall be recorded by the clerk in a "well-bound book to be kept for that purpose."

From the opinion which accompanies this decree of the supreme court of the state (112 to 116), it appears that the decree was based upon the proposition that section 3477 of the Revised Statutes of the United States did not affect the right of the complainant to recover, and that the court also held that there was nothing in the case to show that the services which the complainant rendered consisted in whole or in part of personal solicitation of members of Congress.

The lower court having taken an account, as directed by the mandate of the supreme court of the state, such proceedings were had in the lower court as resulted in a second final decree in that court in favor of the complainant in the sum of $19,999.96, with interest (119). The plaintiffs in error appealed from this decree to the supreme court of the state, and that court again reversed the lower court, but its reversal was merely for a trifling mistake in the amount found due the defendant in error (127–128).

From the opinion of the court which accompanies this last decree (128) it will be seen that it was held that on the hearing of the second appeal no question decided on the first appeal could be reconsidered.

In this last decree the supreme court of the state, after reversing the decree below for the trifling error alluded to, proceeded itself to enter a decree in favor of the complainant

for the sum of $22,106.46. It is to reverse this decree that this writ of error was sued out.

It will be seen that the state court has held that the defendant in error was entitled to recover *on his contract.* In his pleadings and in his evidence the defendant in error sought to recover upon a *quantum meruit* as well as upon the written contract, but the decision of the state court is placed solely upon the ground that the contract was binding and that by it the defendant in error was entitled to thirty-three and one-third per cent. of the amount recovered from the United States.

ARGUMENT.

The grounds advanced in support of the motion to dismiss will now be considered in the order in which they are presented in the brief filed on behalf of the defendant in error.

I. It is argued that the plaintiffs in error lost their right to a review of the questions decided in the supreme court of the state, because they did not sue out a writ of error to review the first decree of that court. It would seem to be unnecessary at this day to refer to the cases in support of the proposition that this court will not interfere with the action of the state courts until there has been rendered a final judgment and decree by the state court having final jurisdiction in the premises.

It will be sufficient, perhaps, to refer to McComb *vs.* Commissioners of Knox County, 91 U. S., 1. In that case the trial court had overruled a demurrer to an answer to the original petition and had sustained a demurrer to a reply to the answer. The plaintiff appealed. The supreme court of the state held both rulings erroneous, or, in other words, it held that the plaintiff was entitled to a judgment in his favor on the pleadings as they stood. The defendant, however, suggested that if the case should be remanded he might ask leave of the court below to amend his answer. The case

was accordingly remanded for further proceedings. The defendant finally concluded not to amend; whereupon a final judgment was entered against him in the lower court. He sued out a writ of error from this court to review that judgment, but the writ was dismissed on the ground that he should have again taken the case to the supreme court of the state; and this, notwithstanding that the judgment in the lower court was the necessary result of the decision of the supreme court on the first appeal.

II. It is next argued that a Federal question is not presented when a defendant in a state court claims that he cannot be held liable in the suit, because he is protected by the provisions of an act of Congress, and the state court overrules that defense and renders a judgement or decree against him.

This precise question was presented to this court in Railroads *vs.* Richmond, 15 Wallace, 3, in which case the motion to dismiss the writ of error was overruled on the ground that the writ was to review a judgment based upon a contract, which contract the plaintiff in error, who was the defendant in the state court, set up was void under the Constitution of the United States and certain acts of Congress, and the state court had refused to sustain the defense. That case was afterwards heard in this court on the merits, this court agreeing in the conclusion of the state court (Railroad Company *vs.* Richmond, 19 Wallace, 584).

In Daniels *vs.* Tearney, 102 U. S., 415, the plaintiff in error had been held liable in a state court on a bond which he claimed was invalid under the contract article of the Constitution. An objection to the jurisdiction of this court was overruled.

In Price *vs.* Forrest, 173 U. S., 410, the sole question in the case was whether the transfer of a claim against the United States to a receiver, by an order of a court having jurisdiction of the parties concerned, was in violation of section 3477 of the Revised Statutes of the United States. The

state court held that the statute did not apply to such a case, and this court agreed in that conclusion. It seems not to have occurred to counsel or the court that there was any question as to the jurisdiction.

In Anderson *vs.* Carkins, 135 U. S., 483, a judgment of the supreme court of Kansas enforcing specific performance of a contract was reversed by this court on the ground that the contract was void under a certain act of Congress. The question of the jurisdiction of this court was considered and overruled.

In this connection it is suggested in the adverse brief that even if the executrix who made the contract with the defendant in error could have raised the question of the invalidity of that contract under section 3477, these plaintiffs in error cannot raise it, because they were not parties to the contract. This would seem to be a question to be considered in discussing the merits of the case, and not in the consideration of the motion to dismiss, inasmuch as these plaintiffs in error were the only appellants when the case was last taken to the supreme court of the State of Mississippi.

It would seem to be too plain for argument that the validity of such a contract as is involved here may be raised by the original parties to the contract or by those who claim under them respectively. It would be just as reasonable for the plaintiffs in error to contend that the defendant in error cannot recover because the original party to the contract is dead as for him to contend that because she is dead any defense which she might have made to an action against him on the contract is taken away by her death, so that it cannot be raised by those upon whom her estate has devolved.

III. Lastly, it is urged that the plaintiffs in error were not parties to the decree rendered in the supreme court of the state of Mississippi, and therefore are not entitled to invoke the jurisdiction of this court to review that decree.

On examination of this record it will be seen that when the defendant in error filed his original complaint he not only made the administrator of the estate of Haller Nutt defendant, but joined as defendants also these plaintiffs in error, and stated in his pleadings that he did so in order that they might have the opportunity of propounding such objections as they might have to the payment of his fee, and that the administrator might be thoroughly protected in such payment (1–3).

When the defendant in error appealed to the supreme court of the state of Mississippi from the first decree of the chancery court against him, he caused a citation to be issued against these plaintiffs in error, requiring them to appear in the supreme court of the state to answer his appeal (110). This citation was duly served upon them (111). After the chancery court had entered its second and final decree in favor of the defendant in error, an agreement was entered into between the counsel for the defendant in error and the counsel for these plaintiffs in error as to what should constitute the record in the supreme court of the state on the second appeal (120–121). The plaintiffs in error filed their appeal bond on that appeal, which was duly approved (121). The administrator seems to have refused to join in that appeal, and a summons was duly served upon him to appear in the supreme court and unite in the appeal taken by these plaintiffs in error (123). And when the supreme court of the state held that the appeal bond was insufficient and required a new bond to be given, it was these plaintiffs in error alone who gave the new bond (176).

As the administrator had declined to join in the appeal to the supreme court of the state, he also formally and in writing refused to join in the petition to this court for this writ of error (134).

And as the plaintiffs in error are the proper parties to prosecute this writ of error in this court, so they, and not the administrator, are the real parties in interest. The administrator is merely the officer of the court holding the funds

subject to the order of the court. The distributees of the estate are the only persons who will be injuriously affected by the decree of the state court which is complained of here.

THE MOTION TO AFFIRM.

It was held by the supreme court of Mississippi in this case that the power of attorney, a copy of which is Exhibit B B to the original complaint in the case (5), was void under section 3477, and adverse counsel seem to make no controversy on this point. But this power of attorney was executed at the same time the contract itself was exe cuted, and is expressly made a part of the contract. The contract, after providing that the executor would execute such powers of attorney as might be convenient and necessary, further provides that no revocation of any authority conferred on Denver by the contract, or of any power of attorney relating to the business covered by the same, should be valid. And the power of attorney refers to the contract, because it provides that, Denver's compensation being contingent upon the payment of the claim, the power of attorney is irrevocable. Denver's compensation was a contingent one only, because of the contract. These two papers are linked together and form one agreement. The contract by itself is an assignment, because it expressly gives a lien upon the claim or any draft, &c., issued in payment of it.

The contract further provides that "all expenses of printing, costs of court, and commission fees for taking the testimony are to be charged to the executor," thus plainly indicating that it was in contemplation of both parties that the attorney should not only take the case on a contingent fee, but should pay all the expenses of prosecuting it.

It is not deemed proper or necessary now to take up and consider the question of the validity of this contract under section 3477, as it would be discussed in a brief on the final hearing. It would seem to be necessary now only to refer

the court to the cases of Trist *vs.* Child, 21 Wall., 441; U. S. *vs.* Gillis, 95 U. S., 407; Spofford *vs.* Kirk, 97 U. S., 484; Hager *vs.* Swayne, 149 U. S., 242; and Ball *vs.* Halsell, 161 U. S., 72. The last two cases mentioned are precisely in point, and in both of them it was held that the contract sued on was void under section 3477.

This whole subject was recently carefully considered and all the decisions of this court reviewed by the Court of Appeals of the District of Columbia in Owens *vs.* Wilkinson, 20 App. Cases D. C., 51. In that case, as in this, the claim had been paid and the suit had been brought by the attorney against the administratrix of the claimant's estate, and it was held that because of section 3477 there could be no recovery.

In the case of Conde *vs.* York, 168 U. S., 642, which is much relied upon by adverse counsel, the controversy was between two assignees of the claim, neither of whom, of course, was entitled to any protection on account of section 3477.

The contract in this case is not such a one as commends itself to the consideration of a court of justice.

In Hager *vs.* Swayne, *supra*, Mr. Chief Justice Fuller concludes the discussion of the question arising in that case under section 3477 with these words:

"At common law, the transfer of a mere right to recover in an action at law was forbidden as violating the rule against maintenance and champerty, and although the rigor of that rule has been relaxed, an assignment of a chose in action will not be sanctioned when it is opposed to any rule of law or public policy."

Taking the contract and the power of attorney in this case together, the attorney becomes the principal party in interest. He ties the claimant hand and foot by making the attorney's compensation a lien on the claim or its proceeds, and by having the claimant agree that the attorney

may do anything in connection with the case that the claimant himself could do, including the substitution of some other attorney, and he makes the power of attorney irrevocable, and by necessary implication agrees that he will pay all the expenses of the prosecution of the case.

Such an agreement is void without reference to section 3477. The common law on this subject was held to be in force in this District in Alexander *vs.* Van Wyck, 4 App. Cas. D. C., 294, in which case was involved the notorious "Blodgett" claim against some hundreds of acres of land in the heart of the city of Washington. And in the later case of Peck *vs.* Heurich, 6 App. Cas. D. C., 273–284, the Court of Appeals of the District of Columbia said:

"We must regard an agreement by an attorney to undertake the conduct of a litigation on his own account, to pay the costs and expenses thereof, and to receive as his compensation a portion of the proceeds of the recovery, or of the thing in dispute as obnoxious to the law against champerty."

This court in 167 U. S., 624, affirmed the judgment below in Peck *vs.* Heurich, quoting and approving the foregoing extract from the opinion of the Court of Appeals in that case.

This objection to the contract may not of itself raise a Federal question, but it is persuasive as to the application of section 3477 to the whole subject-matter.

It is respectfully submitted that the motion to dismiss should be overruled, and that the case should be allowed to stand to be argued on the merits when reached in due course.

A. S. WORTHINGTON,
Attorney for Plaintiffs in Error.

FILE COPY.

Office Supreme Court U. S.
FILED
NOV 28 1905
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1905.

No. 78.

CALVIN R. NUTT, JULIA W. NUTT, and LILLIE N. WARD, Plaintiffs in Error,

vs.

S. PRENTISS KNUT and JOHN R. NUTT, ADMINISTRATOR *de bonis non* C. T. A., OF THE ESTATE OF HALLER NUTT, DECEASED.

BRIEF FOR THE PLAINTIFFS IN ERROR.

A. S. WORTHINGTON,
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JUDD & DETWEILER, (INC.) PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

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Brief for the Plaintiffs in Error.

STATEMENT OF CASE.

This case comes to this Court by writ of error to the Supreme Court of Mississippi.

In June, 1902, while the estate of Haller Nutt, deceased, was in administration in the Chancery Court of Adams county, Mississippi, S. P. Knut filed his petition in that Court against John K. Nutt, who was then acting as the administrator of the estate of these plaintiffs

in error, and others, in which the Court was asked to require the administrator to pay him one-third of $89,999.88, in accordance with a contract which he filed with his petition (Rec., 1–3). The contract referred to in the petition consists of two papers, one an agreement, dated May 18, 1874, between James W. Denver and Julia A. Nutt, who at that time was executrix of the estate of Haller Nutt, deceased, and the other a power of attorney of the same date from Julia A. Nutt, executrix, to Denver (4, 5).

These papers together authorized Denver to prosecute a certain claim against the United States on behalf of the estate of Haller Nutt for a contingent fee of one-third of the amount recovered, the payment of which was made a lien on the claim, and on any draft, money or evidence of indebtedness which might be issued thereon, and irrevocably constituted Denver the attorney of the estate to prosecute and collect the claim.

These three plaintiffs in error, by their joint answer to this petition, denied that there was any legal liability resting upon the estate to pay the claim of the petitioner, and averred that the contract which he relied upon was contrary to good morals and public policy, and was null and void, so far as it undertook to vest a right to a contingent fee in Denver, and that the petitioner as Denver's assignee stood in no better position than Denver (15). The other parties in interest, including the administrator, filed answers in which they stated that they had no personal knowledge of the facts relied upon by the petitioner to support his claim, and asked that the

Court require him to make sufficient and legal proof thereof (12, 13).

All the answers were filed either in June or July, 1902. Afterwards, in December, 1902, the petition was amended by the addition of an averment that petitioner was entitled to compensation for what his services were reasonably worth, and that they were reasonably worth $30,000.00 (3, 4). It does not appear that the respondents were ever cited to answer the amended petition, or that they ever did so.

Early in December, 1902, and before he amended his petition, Knut examined several attorneys engaged in the business of prosecuting claims against the United States and proved by them that where an attorney takes such a claim on a contingent fee and pays the expenses of the litigation himself, it is common for the attorney to receive fifty per cent. of the amount recovered (16 to 41).

Knut was examined as a witness in his own behalf, and numerous letters which passed between him and the other parties in interest were put in evidence either by his counsel on his direct examination, or by adverse counsel on his cross-examination (42 to 106).

The cause came on for final hearing in Februry, 1903, before the Chancellor, who held that the contract upon which Knut's suit was based "is violative of the United States statute laws."

The Chancellor further found from the evidence that Knut in prosecuting the claim "did procure personal solicitations to be made of members of Congress of the

United States in behalf of said claim." For these reasons the Chancellor entered a decree dismissing the petition (106).

From this decree Knut appealed to the Supreme Court of Missi-sippi (107). He caused citations to be served upon the persons who were named as respondents to his petition, summoning them to appear in that Court (110). The Supreme Court in December, 1903, reversed the decree of the Chancellor. It held that he was entitled to the one-third of $89,999.88, which he claimed "less any payments made" and remanded the cause to the Chancellor for the taking of an account, directing that any balance that should be thus found to be due should be paid to Knut by the administrator (112).

Section 4352 of the Code of Mississippi of 1892, which was in force at the time this decree was rendered is as follows:

> "What Opinions to be in Writing:—In all cases settling important principles, in cases to be remanded, and in all cases where the judgment or decree of the Court below is reversed, the opinion of the Supreme Court shall be in writing, stating the reasons upon which the decision is made; and the opinion shall be recorded by the clerk in a well-bound book to be kept for that purpose."

The opinion of the Supreme Court of Mississippi giving the reasons for this reversal of the Chancellor will be found on pages 112 to 116 of the record. It will be seen that the principal question considered by that Court was whether the contract upon which Knut relied was

void under section 3477 of the Revised Statutes of the United States. That section reads as follows:

> "SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

The Court held that the power of attorney to Denver, of May 18, 1874, was void under this section 3477 of the Revised Statutes, but that it and the contract with Denver of the same date were separable, and that the contract was not void under that section. As to that part of the Chancellor's decree which held that Knut could not recover because of his personal solicitations of members of Congress, the Court seemed inclined to the opinion that services rendered, under a valid contract, in

obtaining the allowance of a claim by Congress through the personal solicitations of members of Congress would not prevent the attorney in charge of the claim from recovering compensation for his services unless "the facts of the colloquium in each interview with the Senator or Representative were shown, to enable the Court to judge of its propriety." It did not, however, decide that question, but overruled the Chancellor on the ground that the United States having paid the money, it had no concern in the controversy, and the courts would decree a division of the fund among the alleged wrong-doers, according to their contract, without regard to the manner in which the fund had been created (116).

Upon receiving the mandate of the Supreme Court of the State, the Chancellor referred the case to a commissioner to state the account (118). He found that Knut had received $10,000.00 on account of his claim, and that including interest there was due him on March 23, 1904, the sum of $22.106.42 (119). The Chancellor on the same day confirmed the report of the Commissioner, and entered a final decree directing the administrator to pay the sum thus found to be due Knut, with interest from that date.

From this decree Calvin R. Nutt, Lillie N. Ward and Julia W. Nutt, the plaintiffs in error here, appealed to the Supreme Court of the State (121). They assigned as error the refusal of the Chancery Court to dismiss Knut's petition, and the entering of any decree whatever in favor of Knut against the administrator, and also that the decree should have been for $22,106.46, and not for $22,143.30 (123, 124).

The Supreme Court declined to consider the first assignment of error, on the ground that the decree appealed from was entered in accordance with its mandate, and that the appellants could not relitigate in the Supreme Court the questions settled by it on the first appeal. It was found, however, that the Chancellor had entered a decree for $36.88 too much, and for that error alone the decree was reversed, and the Supreme Court entered a new and final decree for $22,106.42 (127–129).

The opinion of the Supreme Court on the second appeal is on page 128 of the record.

Calvin R. Nutt, Lillie N. Ward and Julia W. Nutt bring this case here by a writ of error, which was allowed by the Chief Justice of the Supreme Court of Mississippi (129, 130).

Assignment of Error.

The Court below erred :

1. In holding that the contract of May 18, 1874, between Julia A. Nutt, executrix, and James W. Denver, upon which the petitioner Knut sued, as Denver's assignee, was not void under section 3477 of the Revised Statutes of the United States.

2. In not holding that said contract was void under section 3477.

3. In holding that even if in carrying out the contract, Knut had obtained the allowance of the claim by improper solicitations of members of Congress, it was not open to the plaintiffs in error to make that defense.

4. In not remanding the cause to the Chancery Court

of Adams county, with instructions to dismiss the petition.

Argument.

The final decree in this case in the State Court is based solely on the decision of the Supreme Court of the State that Section 3477 of the Revised Statutes of the United States does not render void the contract to enforce which the suit was begun.

While it is true that in their answer in the Chancery Court (15) these plaintiffs in error did not explicitly refer to any right claimed under the laws of the United States, the decree in their favor which was made in the Chancery Court was based upon two grounds. First, that the contract upon which the action was based was "violative of the United States statute laws"; and Second, that the services for which the complainant sought compensation, consisted in part, at least, of personal solicitations of members of Congress (106). The decree in the Supreme Court of the State (112), which reversed the decree of the Chancery Court and directed the enforcement of the contract sued on, is shown by the contemporaneous opinion of the Supreme Court of the State to be based upon the decision of that Court that the contract sued on is not void under section 3477 of the Revised Statutes of the United States. What is said in the opinion as the effect of improper means being used in getting Congress to allow the claim is based upon the assumption that the contract itself was valid (116).

While it is true that by the amendment which was

made to the original petition, after answers had been filed and testimony completed, the petitioner sought to recover compensation for the reasonable value of his services without regard to the contract, yet the decree in his favor, made by the Supreme Court of the State, did not take the amendment into consideration at all. This is apparent from the first decree of that Court, made on the 7th of December, 1903 (112), from the opinion of the Court filed when that decree was entered, and particularly from the decree of the Chancery Court of the 23d of March, 1904 (119), which was entered in pursuance of the mandate of the Supreme Court of the State. From first to last the State courts seem to have taken no notice of the amendment to the original petition, the action taken by the Chancery Court and by the Supreme Court of the State being based solely upon Knut's claim that he was entitled to one-third of $89,999.88, which was paid to the estate of Haller Knut by the United States, under the contract of May 18, 1874, between that estate and James W. Denver. This is clear for the further reason that all the evidence referred to relates to compensation where the fee is *contingent*. Of course recovery or *quantum meruit* proceeds on the theory that the services are to be paid for without regard to the result of the litigation.

The decision of the State Court that the contract with Denver was not void under the laws of the United States raised a Federal question, and this Court has jurisdiction by writ of error to review such decision.

On this point the decisions of this Court seem not to be entirely in harmony. We will refer to them in their chronological order first quoting section 709 of the Revised Statutes under which the question arises in this case:

> "Sec. 709. A final judgment or decree in any suit in the highest Court of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such Constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a Court of the United States; and the proceeding upon the rever-

sal shall be the same, except that the Supreme Court may, at their discretion, proceed to a final decision of the case, and award execution, or remand the same to the Court to which it was so removed.

"The Supreme Court may re-affirm, reverse, modify, or affirm, the judgment or decree of such State Court, and may, at their discretion, award execution, or remand the same to the Court from which it was removed by the writ."

In Udell *v.* Davidson, 7 How., 769, Udell held land upon certain trusts. Upon filing a bill to have him execute the trusts he set up by way of defense that the title had come from the Government to him through a transaction which was in violation of the laws of the United States, regarding sales of public land. One Gregory had obtained the title from the United States by falsely swearing that he had settled upon the land for his own use, and had not contracted to sell or transfer it to anybody else. The State Court having decreed in favor of the complainants in the case, Udell sued out a writ of error, which was dismissed for want of jurisdiction, the Court observing that the defense was that Udell had got the land by a fraud upon the Government, and contended that by means of this fraud he had acquired under the 25th Section of the Judiciary Act of 1789, a right to perpetrate a fraud also upon his *cestui que trust.*

Wolworth *v.* Kneeland, 15 Howard, 348, is a similar case. In that case a bill was filed in a State Court for specific performance of a contract to convey real estate,

and the defense was that the contract sued upon was part of a scheme by which the title to the land had been obtained from the Government by false representations on the part of an alleged preemptor as to his occupying the land for himself only; but in this case the State Court held that the facts relied upon in defense were not established by the evidence. There would seem clearly, therefore, to have been no Federal question involved, but Taney, *C. J.*, in delivering the opinion of the Court took occasion to say that *if* the "State Court had committed so gross an error as to say that a contract forbidden by act of Congress, or against its policy, was not fraudulent and void, and that it might be enforced in a Court of Justice; it would not follow that this writ of error could be maintained." And the opinion goes on to hold that the 25th Section of the Judiciary Act gave the plaintiff in error "no right to protection from the consequences of a contract made in violation of law."

In Daniel *v.* Tearney, 102 U. S., 415, it was claimed by the obligee of a certain bond that it was void under the Constitution of the United States, because it was given in aid and furtherance of the objects and policy of the ordinance of secession of West Virginia. The State Court having decided against this defense, the defendant brought the case here by writ of error, and it was held that this Court had jurisdiction (418).

In Anderson *v.* Carkin, 135 U. S., 483, a bill was filed in the State Court of Nebraska for specific performance of a contract for the conveyance of a tract of land, and the defense was that the contract was against public

policy and void under the homestead laws of the United States. At the time the contract sued on was entered into, the title to the land was in the United States, and it was made in contemplation of Anderson entering upon the land, acquiring title to it, and then transferring that title to Carkins. Of course this required Anderson to commit perjury, because in order to get title to the land from the Government he was required to make oath that he was acquiring the land for himself. The Supreme Court of the State having affirmed a decree of the lower Court in favor of the complainants, and the case having been brought here by writ of error, two questions were presented, one as to the jurisdiction of the Court, and the other as to error. On the question of jurisdiction Mr. Justice Brewer, delivering the opinion of the Court, said (485, 486):

> "First, with respect to jurisdiction: It will be observed that the contract is *prima facie* good. The land is described, the consideration stated, and its receipt acknowledged, a sale affirmed, an agreement to convey recited, and the time for the conveyance specifically named. To a bill for the specific performance of this contract, the defendants answered that the contract was void under the homestead laws of the United States. Notwithstanding this defense, so expressly stated, a decree for specific performance was entered against them. Obviously, this could not be so entered without adjudging such defense insufficient, and denying to them the protection claimed under the homestead laws. It is true that the Supreme Court of Nebraska, in its opinion,

relied principally on two sections of the statutes of Nebraska ; but it also, and as plainly, ruled that the defense that the contract was against public policy and void was not sustainable, and that the homestead laws carry with them no protection against such a contract. If, under their provisions such a contract is void, then obviously no State statute can vitalize the contract, or deprive a party thereto of the protection afforded by the Federal Statutes. Inasmuch, therefore, as no decree could pass against the defendant without denying the protection asserted by them under the homestead laws, and as the Supreme Court of Nebraska expressly declared that this invalidity under the homestead laws was not sustainable, it follows that the case is one in which a right was specifically set up and claimed under the statutes of the United States, and the decision and judgment of the State Court were against that right. Hence the jurisdiction of this Court can not be doubted. Murdock *v.* Memphis, 20 Wall., 590. It is immaterial that the State Court considered the case to be within the provisions of certain State statutes. The grasp of the Federal Statute must first be released. The construction and scope of that are Federal questions, in respect to which the party who claims under such statute, and whose claim is denied, has a right to invoke the judgment of this Court."

The Court accordingly considered the case, and held that the contract could not be enforced, and the decree of the State Court was reversed.

In Logan County National Bank *v.* Townsend, 139 U. S., 67, the question was, whether an agreement which the

bank had entered into was void, because it was beyond its powers under its charter to make such an agreement. The Court of Appeals of Kentucky having held that the agreement was valid, and this Court held that it had jurisdiction by writ of error to review that decision.

In McCormick *v.* Market Bank, 165 U. S., 538, an action was begun in the State Court of Illinois to recover from a national bank rent under a certain lease. The defense was that the lease was entered into before the bank had been authorized by the Comptroller of the Currency to commence the business of banking, and that under the Statutes of the United States applicable to the case the bank had no power to make such a lease at that time. The State Court sustained this defense, holding the lease void. This Court sustained its jurisdiction to review the action of the State Court, saying that "if the decision had been the other way, it would, as admitted at the bar, have been a decision against an immunity set up and claimed by the defendant under a statute of the United States, and therefore reviewable by this Court on writ of error." (546).

In Conde *v.* York, 198 U. S., 642, the facts were that a contractor who had erected buildings for the Government had assigned and transferred to York and another a part of the money that was to come to him from the Government, and had transferred to Conde and another a draft which he had received from the Government under the contract. The agreement with York antedated the agreement under which the draft was transferred to Conde. York brought suit against Conde in the State

Court of New York, and Conde set up by way of defense that the transfer to York was void under section 3477 of the Revised Statutes of the United States. The Court of Appeals of New York having decided in favor of York, Conde brought the case here by writ of error. This Court dismissed the writ of error for want of jurisdiction. Mr. Chief Justice Fuller, in delivering the opinion of the Court, said (p. 648):

> "In order to give this Court jurisdiction to review the judgment of a State Court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be a title or right of the plaintiff in error and not a third person only; and the statute or authority must be directly in issue. In this case the controversy was merely as to which of the claimants had the superior equity in the fund. The statute was only collaterally involved, and plaintiffs in error asserted no right to the money based upon it."

In that case it is to be observed the suit was between two assignees, neither the Government nor the claimant having any interest in the controversy.

In Price *v.* Forrest, 173 U. S., 410, a State Court in New Jersey appointed a receiver and authorized him to collect a claim held by the defendant in the case against the United States. This was done at the instance of a judgment creditor of the defendant. The receiver brought a suit in the State Court, seeking, among other things, to enjoin the representatives of Price, who died in the meantime, from making any demand upon the

United States for the money due Price's estate. In the State Court the receiver's claim was sustained, and the injunction he asked for was granted. A writ of error having been sued out from this Court, it was urged here that the order of the State Court assuming to transfer or assign Price's claim against the United States to its receiver was void under section 3477 of the Revised Statutes. This Court entertained the writ of error and, after full consideration of the case, affirmed the decree of t..e Court of Errors and Appeals of New Jersey. It was not suggested by counsel and appears not to have occurred to the Court that there was any question as to the jurisdiction of this Court in the case.

In Allen *v.* Arguimbau, 198 U. S., 149, an action had been brought in a State Court upon a promissory note. The defendant pleaded, among other things, that the note was given in consideration of the agreement of the payee to manufacture certain cigars and to have the cigars removed from the place where they were made without being packed in boxes on which should be stamped, indented, burned or impressed the number of cigars in each box and the number of the manufactory in which the cigars were manufactured. Under the internal revenue laws of the United States it was a criminal offense to remove cigars from the place of manufacture without such tagging and marking. The Supreme Court of Florida sustained a judgment in favor of the plaintiff and this Court dismissed the writ of error in the case for want of jurisdiction. In the State Court no

opinion was filed, so that there was some doubt as to the grounds upon which that Court had proceeded in affirming the judgment of the trial Court in favor of the plaintiff. But Mr. Chief Justice Fuller, speaking for this Court, said that the plea in question did not bring the case within the meaning of section 709 of the Revised Statutes of the United States, and quoted *verbatim*, and apparently with approval, the dictum of Mr. Chief Justice Taney in Walworth *v.* Kneeland, 15 Howard, 348, referred to above. The other decisions of this Court above referred to in which the exact point being before the Court for its decision a contrary conclusion was reached after full consideration are not referred to in the opinion.

It is submitted with great respect that the better doctrine on this subject is that set forth in the opinion delivered by Mr. Justice Brewer in Anderson *v.* Carkins, 135 U. S., 483, an extract from which is given above.

Suppose Congress should enact that when a suit is brought to enforce the assignment of a claim against the United States the defendant should have the *right* to plead the invalidity of the assignment as a defense. Would there be any doubt that in that event this Court would have jurisdiction of a case in which a State court should deny the right? And what does section 3477 mean if it does not mean that such assignments as it forbids may not be enforced by the Courts?

The contract upon which this defendant recovered judgment is absolutely void under section 3477 of the Revised Statutes.

The cases in this Court bearing upon this question are numerous.

In Trist *v.* Child, 21 Wall., 441, a bill in equity had been filed in the Supreme Court of the District of Columbia by an attorney to enjoin his client from demanding and receiving from the Treasury Department the money due him under an allowed claim until the client should pay the attorney's contingent fee of twenty-five per cent. of the amount recovered, which he was entitled to under a contract between them. It was held that the contract gave the attorney no lien; that if it did, it was void under the act of 1853 (now section 3477); and that the contract was void for the additional reason that it contemplated lobbying services. It was conceded that the attorney was an honorable lawyer, and that his contract did not call for, and his services did not include, any attempt to corrupt any official.

In Spofford *v.* Kirk, 97 U. S., 484, it appeared that Kirk, who had a claim pending against the Government, gave an order on his attorneys to pay Spofford a certain sum out of the moneys to be collected from the claim. The attorneys accepted the order. After the allowance of the claim Spofford filed a bill in equity to enjoin Kirk from receiving the warrant from his attorneys, who had received it from the Government, until he should pay the amount due Spofford on the accepted order. This Court

said "The complainant's case rests upon the assumption that, coupled with the acceptance of the drawee, they (the orders) created an equitable lien upon the debt due from the United States to the drawer."

It was held that the acceptance of this order amounted to an assignment, and was, therefore, invalid under section 3477.

The Court refers to the dangers which the Act of 1853 guarded against—one, the risk and trouble the Government would have in dealing with several claimants for the same fund, the other, the "possible combination of interests and influences in the prosecution of claims which might have no real foundation." And the Court expressly declared that such assignments are void, not only when set up against the Government, but as between the parties thereto.

In Hager *v.* Swayne, 149 U. S., 242, was a suit by an assignee of a claim against the United States for a refund of duties alleged to have been illegally exacted by the collector. This Court held the assignment void under section 3477, and again refers to the two mischiefs which that section of the Act of 1853, from which the section was taken, was intended to prevent. And Mr. Chief Justice Fuller, in concluding the opinion, said:

> "At common law, the transfer of a mere right to recover in an action at law was forbidden as violating the rule against maintenance and champerty, and although the rigor of that rule has been relaxed, an assignment of a chose in action will not be sanctioned when it is opposed to any rule of law or public policy."

Ball *v.* Halsell, 161 U. S., 72, was a suit by bill against the executrix of one Halsell to enforce an agreement by Halsell to compensate Ball for services in prosecuting an Indian depredation claim against the United States by giving him one-half the amount recovered. Much of the controversy in the case was as to an Act of Congress passed in 1891, which limited to fifteen per cent the amount to be paid to attorneys for fees in Indian depredation cases. The plaintiff claimed that this act was void as to him, because it was passed after his contract was made. But this Court held that the original agreement was contrary to the express terms of the act of 1853 which is now embodied in section 3477.

In this connection the Court is referred also to the recent case of Owens *v.* Wilkinson, 20 App. D. C., 51, in which the Court of Appeals of the District held void a contract by which an attorney was to have an interest in a claim against the Government equal to one-half of the total amount received. The Court held further that the plaintiff could not recover anything on a *quantum meruit*, because it was obvious that the case was prosecuted in part, at least, by means of personal solicitations of members of Congress. It was not claimed or suggested that there was any attempt to corrupt any member of Congress. But the decision is put upon the ground that an attorney can not recover compensation in the courts for services rendered in personally soliciting members of Congress to vote in favor of the allowance of claims against the Government.

And in Tool Company *v.* Norris, 2 Wall., 452, it was held that a contract for a contingent fee for obtaining a contract with the Government was void. In that case, as in the others above mentioned, it was not urged that any improper means or influence were to be resorted to, but the Court said "the law looks to the general tendency of such agreements, and it closes the door of temptation by refusing them recognition in any of the courts in the country."

In the case at bar it will no doubt be conceded by adverse counsel that the power of attorney to Denver (5) was void under section 3477. And it can hardly be seriously contended that so much of the contract proper (4) as undertakes to give Denver a lien on the claim is void for the same reason. Counsel will probably contend that the power of attorney and the lien may both be eliminated and the rest of the contract enforced. But this will not avail.

These papers taken as a whole show that the object of the parties was to give the attorney absolute control of the claim, with the right to prosecute it himself or to turn it over to some other attorney. The claimant had no power under the agreement to interfere in any way. The attorney, not the claimant, was to have the right to receive the money from the Government, and give receipts for it. The whole scheme was in direct violation of section 3477, and presents a typical case embodying the evils which this Court has several times said gave rise to the act of 1853, which has been

merged in section 3477. It will not do for the attorney now to ask the Court to shut its eyes as to the real contract and to itself make a new one, which if it had been offered to him at the time the attorney would not have considered for a moment. It is not a case in which the good can be separated from the bad and given effect as an independent contract. In McMullen *v.* Hoffman, 174 U. S., 653, this Court reached such a conclusion in a case much like this, except that in that case the parties had entered into a written contract which was legal on its face and the objectionable parts of the agreement were verbal.

Without regard to section 3477, this decree should be reversed because the services rendered by Knut were in part at least such that the public policy of the United States *will not permit compensation to be recovered for them.*

This point arises under the third assignment of error.

The Supreme Court of Mississippi did not expressly pass upon the question whether Knut's services were of an objectionable character, but after referring to the evidence on the subject (115–116), it held in substance that if there had been improper solicitations of members of Congress, Knut was nevertheless entitled as a matter of law to recover his stipulated compensation under the contract, in pursuance of which said services were rendered. On this point the Court refers to certain Mississippi decisions and to Barry *v.* Capon, 151 Mass., 99, as holding that after an illegal contract has been performed

one of the parties who has received the profits of the scheme may be compelled to account to the others. It seems, however, hardly necessary to consider those cases here in view of the repeated decisions of this Court on the same subject. See Trist *v.* Childs, 21 Wall., 452, and see particularly McMullen *v.* Hoffman, 174 U. S., 653.

The cases on this subject are very thoroughly and carefully reviewed by the Court of Appeals of the District of Columbia in the recent case of Owens *v.* Wilkinson, 20 App. D. C., 51.

It is true that there seems to be no *statute* of the United States which declares that compensation shall not be recovered for what are perhaps best known and described as lobbying services. But this Court has repeatedly held that public policy forbids the maintenance of suits to recover compensation for such services.

And in the cases above cited of Daniel *v.* Tearney, 102 U. S., 415, and Anderson *v.* Carkins, 135 U. S., 483, there was no statute which declared the instruments sued on should be void or which forbade recovery on them, and both these cases, it should be remembered, came here by writ of error to a State Court.

As to the ethics of this defense to the claim of Knut it is sufficient to cite the case of McMullen *v.* Hoffman, 174 U. S., 639, in which at page 669 Mr. Justice Peckham, speaking for the entire Court said:

> "We must, therefore, come back to the proposition that to permit a recovery in this case is in substance to enforce an illegal contract, and one which

is illegal because it is against public policy to permit it to stand. The Court refuses to enforce such a contract and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest. It has been often stated in similar cases that the defense is a very dishonest one, and it lies ill in the mouth of the defendant to allege it, and it is only allowed for public considerations and in order the better to secure the public against dishonest transactions. To refuse to grant either party to an illegal contract judicial aid for the enforcement of his alleged rights under it tends strongly towards reducing the number of such transactions to a minimum. The more plainly parties understand that when they enter into contracts of this nature they place themselves outside the protection of the law, so far as that protection consists in aiding them to enforce such contracts, the less inclined will they be to enter into them. In that way the public secures the benefit of a rigid adherence to the law."

The evidence in this case leaves no doubt that Knut's services for which he now claims compensation were, in great part, if not altogether, lobbying services, pure and simple. He did, indeed, deny that he approached, or authorized anybody else to approach, members of Congress to solicit their votes upon personal considerations (73.) But it is quite evident from a consideration, even of his own testimony, that personal appeals to individual members of Congress were an important part of the proceedings before Congress, which resulted in the allowance of the claim. (67, 68, 69, 74). His brother, Calvin

R. Knut, one of the plaintiffs in error, gave very distinct testimony in this direction (77, 79).

All doubt on this subject is removed by the letters in the record written by Knut while the case was pending before Congress, most of which were put in evidence by Knut himself. On July 26, 1901, referring to the proceedings which the other heirs were about to take to have some other attorney employed to conduct the case, he wrote to his brother John, as follows:

> "Self-protection is the first law of nature, and my answer thereto is the pointing out the inherent weakness of the claim as justification for any seeming delay, etc., and in the melee a whole lot will be brought out that ought to be kept quiet, and this must necessarily reach Washington, and that ends the claim. Possibly all the other heirs can stand the loss to gratify their opposition to me, which is personal only, and in the majority of instances, jealousy. You would be surprised to know the amount of the Cloverdale money that went for lawyer's fees. In this next business thousands would be consumed, and the claim killed, besides an injury to the name and prestige of the family that generations will have to pass before it is forgotten." (95, 96).

On April 12, 1901, Knut, while still angry because of the efforts made to have him supplanted by another attorney, wrote to his brother, Calvin, as follows:

> "As soon as I know as a fact that Caddy is going to employ another attorney, I am going to ask the Court to set aside his appointment as administrator and appoint someone else. I believe I can show the Court his course, if he pursues that course, will

be so detrimental to the best interests of the claim that such a motion will be allowed. It is possible that the Court will not interfere, but if it does not, then it is my belief that such a course will postpone the payment of the claim a number of years, if it does not kill it entirely. It has taken me five years to overcome the effects of Beltzhoover's attack, instituted thereto by Arthur Denver, and now that there is no opposition awake to it in Congress, it is suicidal to call in outsiders. You had better turn to the Congressional Record for 1895, page 1933, and read that debate. Those facts dug up again would kill us, and it is senseless to invite the attack. If I let go there are those in Congress who know all about this, and I don't believe they can be kept down. I shall resort to every legal process to stop the employment of and engaging another attorney, *but if I fail, and if by chance the claim is paid I shall stop the payment of any fees to him under the decision of the Supreme Court in the case of Trist* v. *Chiles, 24 Wall.*"

* * * * * * *

"Both the Chairman of Senate and House Committees, who knew all that was in the Beltzhoover speech, told me flat-footed and most pointedly that though their effort to get these claims was a disparing one and could not and should not be loaded down with a great big claim, open to such an attack, and which would kill the whole bill, and if I attempted to force it in or on the bill the explosion and exposure would be by them made. Such was the condition of affairs then, and that now is all allayed and smoothed over, and if you will just be quiet and let things alone the claim will go right

along with the other claims and be paid. You may talk to all the people you know, in either the House or Senate, but none of them know what I do, and though their advice may be generally good, specifically it can not be, as they do not know all the facts." (101, 102, 103)

On the whole it is respectfully submitted that the decree of the Supreme Court of Mississippi should be reversed and that Court instructed to have Knut's petition dismissed. There can be no ground for further proceedings because there is no evidence on which compensation on guardian *meruit* could be allowed and because if there were such evidence that it is impossible to separate proper from improper sources in this case and this petition must therefor fail altogether.

A. S. WORTHINGTON,
Attorney for Plaintiffs in Error.

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JAMES H. McKENNEY

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

CALVIN R. NUTT, JULIA W. NUTT AND LILY NUTT WARD, Plaintiffs in Error,

vs.

S. PRENTISS KNUT AND JOHN R. NUTT, Administrator *de bonis non c. t. a.* of the Estate of Haller Nutt, Deceased.

No. 140.

Motion to Dismiss or to Affirm.

T. C. CATCHINGS,
O. W. CATCHINGS,
Solicitors for Appellee, S. Prentiss Knut.

PRESS OF BYRON S. ADAMS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

CALVIN R. NUTT, JULIA W. NUTT AND LILY NUTT WARD, Plaintiffs in Error,

vs.

S. PRENTISS KNUT AND JOHN R. NUTT, Administrator *de bonis non c. t. a.* of the Estate of Haller Nutt, Deceased.

No. 340.

Motion to Dismiss or to Affirm.

Comes now the appellee, S. Prentiss Knut, by his counsel appearing in his behalf, and moves the court to dismiss the appeal in the above entitled cause for want of jurisdiction:

First: Because the Supreme Court of Mississippi, in rendering its judgment of May 23, 1904, that being the judgment from which the appeal herein is taken, did not consider or pass upon any Federal question whatsoever, and because, as appears from the opinion of the said court, made a part of this record, it was without jurisdiction to pass upon or consider the alleged Federal question, which is made the basis of this appeal.

Second: No Federal question which would give this court jurisdiction to review the said judgment of the Supreme Court of Mississippi was presented or passed upon at any stage of the suit below. The appellee instituted proceedings in the Chancery Court of Adams County, Mississippi, to secure payment under a contract originally made between General Denver and his mother, Mrs. Julia A. Nutt, then executrix of Haller Nutt, on May 18, 1874, he having taken the place of General Denver by assignment. The contract was for the prosecution of a claim against the government, and the executrix agreed to pay the appellee "a sum equal to 33 1-3 per cent. of the amount which may be allowed on said claim." Mrs. Julia A. Nutt died, and John K. Nutt was appointed Administrator d. b. n. c. t. a. The appellants made the point in argument, though not by their answers, that the contract was void as being in violation of Section 3477 of the Revised Statutes, that being the statute condemning assignments of claims against the government. Appellee submits that no such Federal question was thereby raised as will give this court jurisdiction.

Third: Because the appellants were not parties to the judgment of the Supreme Court of Mississippi. The said judgment was rendered against John K. Nutt, Administrator, alone. These appellants are among the heirs of the Nutt estate, and while the appellee made them parties to his petition in the Chancery Court of Adams County, he neither prayed nor recovered any judgment against them, either in that court or in the Supreme Court of the State. Appellee submits that not being parties to the judgment of the Supreme Court of Mississippi, they are not entitled to prosecute an appeal therefrom.

And the said appellee, by counsel aforesaid, also moves the court to affirm the said judgment or decree from which this appeal is taken, because, although the record may show

that this court has jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only. This appears:

Fourth: Because, as was expressly decided by the Supreme Court of Mississippi, it is perfectly manifest by simple inspection thereof that the contract upon which the appellee recovered did not constitute an assignment or transfer to General Denver, through whom he claims as assignee, of any interest in or part of the claim of the estate of Haller Nutt against the United States.

Fifth: Because if it was such an assignment or transfer, it was clearly enforcible as between the parties to it, as the claim had been allowed by the government and the money paid by it into the hands of the executor of said estate. The claim of the estate of Haller Nutt having been adjusted and paid, the United States had no interest or concern whatsoever in the manner of the distribution or disposition of the proceeds.

T. C. CATCHINGS,
O. W. CATCHINGS,
Solicitors for Appellee, S. Prentiss Nutt.

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JAMES H. McKENNEY,
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IN THE

Supreme Court of the United States

October Term,

CALVIN B. [illegible]
NUTT WARD, [illegible]

vs.

S. PRENTISS [illegible]
Administrator, de bonis non,
Estate of Haller Nutt, Deceased.

Brief for Appellee, S. Prentiss [illegible]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

CALVIN R. NUTT, JULIA W. NUTT, AND LILY NUTT WARD, Plaintiffs in Error,

vs.

S. PRENTISS KNUT AND JOHN R. NUTT, Administrator *de bonis non c. t. a.* of the Estate of Haller Nutt, Deceased.

No. 340.

Brief for Appellee, S. Prentiss Knut, on Motion to Dismiss or Affirm.

Statement of the Case.

On May 18, 1874, a contract was entered into between Mrs. Julia A. Nutt, Executrix of the estate of Haller Nutt, and General J. W. Denver, a lawyer, residing in the city of Washington, which is set out on page 4 of the transcript of record. General Denver was to prosecute a claim of the estate of Haller Nutt against the United States for the use of property and for property of which the estate had been deprived by the officers of the government, amounting

to $1,000,000, more or less. In consideration of his services, Mrs. Nutt, as executrix, agreed to pay him a sum equal to 33 1-3 per cent. of the amount which might be allowed on the claim. That part of the contract is in the following words and figures, to-wit:

> "And in consideration therefor, the party of the second part agrees to pay the party of the first part a sum equal to 33 1-3 per cent. of the amount which may be allowed on said claim, the payment of which is hereby made a lien upon said claim and upon any draft, money, or evidence of indebtedness which may be issued thereon."

By consent of Mrs. Julia A. Nutt, Executrix, on March 19, 1887, this contract was assigned by General Denver to her son, Mr. S. Prentiss Knut, the appellee, who thereafter stood, with regard to it, in the place of General Denver, and with the same rights which the contract had conferred upon General Denver.

Pending the prosecution of the claim Mrs. Nutt died, and one Williams was appointed administrator in her place. Thereafter Williams died, and Mr. John K. Nutt, a brother of Mr. S. Prentiss Knut, appellee, was appointed administrator.

The claim was pending in one form or another from May 18, 1874, when the contract with General Denver was made, until May, 1902, when Congress appropriated $89,999.83 to cover the findings which had been made by the Court of Claims. This sum was received by Mr. John K. Nutt, Administrator, from the United States Treasury.

On May 18, 1874, the same day upon which this contract between General Denver and Mrs. Nutt, Executrix, was made, Mrs. Nutt executed her power of attorney in favor of General Denver, which is set out in full on pages 5 and

6 of the transcript of record. This power of attorney need not be further considered for the reason that no claim was made by Mr. S. Prentiss Knut, appellee, based upon it, and for the further reason, as will hereafter be shown, the Supreme Court of Mississippi declared the same to be void as in violation of Section 3477 of the Revised Statutes of the United States. So far, therefore, as any Federal question could arise out of this power of attorney, it was decided in favor of the appellants, and consequently can cut no figure here. It is needless to do more than say that nearly the whole of the transcript is made up of testimony manifesting the valuable and prolonged services rendered by the appellee, S. Prentiss Knut, in the prosecution of this claim and which resulted in the recovery stated. It is shown that he had the sole control of the matter and that he had no assistance from any source whatsoever in bringing the matter to a successful conclusion.

Thereafter Mr. S. Prentiss Knut, the appellee, filed his petition in the Chancery Court of Adams County, Mississippi, in which the estate of Haller Nutt was being administered, in which he set out this contract and the said power of attorney, and his services as stated, and the reception by the Administrator of $89,999.83, as stated, and prayed as follows:

> "Your petitioner now desires to receive payment from the administrator in accordance with the contract filed herewith, and while your petitioner is not advised as to there being any necessity for making the heirs and devisees, who claim to be entitled to a distribution of the amount recovered, parties to the petition, yet in order that all of the parties may be before the court, and that they can have the opportunities of propounding such objections as they may have as to the payment by the administrator of your petitioner's fee, and to the end that the administrator may be thor-

> oughly protected in such payment, your petitioner has made them parties, their names and post-office addresses are shown above, and petitioner asks that summons may issue for the administrator, and that publication may be made for non-residents, citing them to appear at the next term of court, and make answer to this petition."

The administrator, John K. Nutt, and the appellee, S. Prentiss Knut, were both among the heirs of Haller Nutt, deceased. All of the heirs answered the petition, but with the exception of his sisters, Miss Julia W. Nutt and Mrs. Lily Nutt Ward, and his brother Calvin R. Nutt, the answers were purely formal and submitted the matter to the judgment of the court after it should have considered the law and the facts. Mr. Calvin R. Nutt and his sisters, Miss Julia W. Nutt and Mrs. Lily Nutt Ward, denied that Mr. S. Prentiss Knut was entitled to any compensation, and set up that the contract with General Denver, of which Mr. Knut became the assignee, was contrary to good morals and public policy and null and void, and conferred no rights which a court would recognize. A large amount of testimony was taken by Mr. S. Prentiss Knut, appellee, for the purposes of showing the services rendered by him and for the general purpose of establishing his right to the relief prayed. It was not pleaded by any of the parties defendant to this petition that the contract under which the appellee, S. Prentiss Knut, claimed, was void as being in violation of the statutes of the United States, but the Chancellor so decided. He further held that the petitioner was not entitled to relief for the reason that in the prosecution of the claim before the Congress of the United States in procuring and in attempting to procure appropriations for the payment thereof, he procured personal solicitations to be made of members of Congress in behalf of the claim. This de-

cree of the Chancery Court of Adams County, Mississippi, was rendered February 19, 1903, and will be found on page 106 of the transcript of record. From this decree the appellee, S. Prentiss Knut, prosecuted an appeal to the Supreme Court of Mississippi. The Supreme Court of Mississippi held that the power of attorney from Mrs. Julia A. Nutt, Executrix, to General Denver, hereinbefore alluded to, was void as being in violation of Section 3477 of the Revised Statutes of the United States, which is as follows:

> "All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. such transfers, assignments and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

It further held that the contract, on its face, was not void as violative of the United States statute laws, and that it did not have the effect of assigning or transferring any part, or share, or interest, in the claim of the estate of Haller Nutt against the United States. It held that the contract was not, on its face, a lobbying contract, and that defendants to

the petition had failed to establish, as a matter of fact, that Mr. S. Prentiss Knut, appellee, had been guilty of making personal solicitations of members of Congress in order to secure the allowance of the claim. It said (Transcript of Record, p. 116):

> "But suppose there were improprieties of this nature committed in carrying out the valid contract, is it, therefore, settled that complainant is to have none of the fruits? The government having paid the money, has no concern in it, and on the facts here, we do not think that defendants should have it all, free from obligation to complainant. Our own court is committed to this doctrine. *Fewell* v. *Surety Co.*, 80 Miss., 791; *Howe* v. *Jolly*, 68 Miss., 324; *Gary* v. *Jacobson*, 55 Miss., 207; *Walker* v. *Jeffries*, 45 Miss., 165; *Gilliam* v. *Brown*, 43 Miss., 659. See also *Barry* v. *Capen*, 151 Mass., 99, which last case seems directly in point."

The Supreme Court of Mississippi reversed the decree of the Chancery Court of Adams County and entered a decree on December 7, 1903, as follows (Transcript of Record, p. 112):

> "This cause having been submitted at a former term of this court on the record herein from the Chancery Court of Adams county, and this court having sufficiently examined and considered the same, and being of opinion that there is error therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 19th day of February, 1903, be and the same is hereby reversed. And this court proceeding now to render such decree as the court below should have rendered, doth order, adjudge and decree that S. P. Knut is entitled to his prayer for 33 1-3 per cent. of the amount collected by

the administrator, $89,993.83, in full for any advance made by him and all services, less any payments made, and remand the cause for an account to be taken accordingly, and for order that any balance of this per cent. unpaid be paid to him by the administrator. It is further ordered, adjudged and decreed that the appellee do pay the costs of this cause in this court and in the court below to be taxed, etc."

The opinion of the Supreme Court of Mississippi will be found on pages 112 *et seq.* of the transcript of record.

In accordance with this judgment of the Supreme Court of Mississippi the Chancery Court of Adams County on March 23, 1904, referred the case to the clerk of the court to state an account of what was due the petitioner, S. Prentiss Knut, and directing him to allow Mr. Knut 33 1-3 per cent of the said sum of $89,999.83, and to charge him with whatever amount had been paid him on account of said claim, and then to allow him interest at the rate of 6 per cent. per annum upon the balance due from the date when he filed his petition. (Transcript of Record, p. 118.) On the same day the Chancery Court of Adams County made a decree in favor of Mr. Knut for $22,143.50, although the decree recited that the clerk had reported that there was due him $22,106.42. (Transcript of Record, p. 119.) This was manifestly a clerical error. From this decree of the Chancery Court of Adams County all of the appellants here, save and except John K. Nutt, the administrator, prosecuted an appeal to the Supreme Court of Mississippi. On that appeal the following errors were assigned (Transcript of Record, p. 123):

(1) The court erred in refusing to dismiss the petition of appellee, and in rendering any decree what-

ever in favor of appellee against John K. Nutt, administrator d. b. n. c. t. a. of estate of Haller Nutt, deceased.

(2) If any decree whatever should have been rendered in favor of appellee against John K. Nutt, administrator d. b. n. c. t. a. of estate of Haller Nutt, it should have been for the sum only of $22,106.46, and not for $22,143.30, as decreed by lower court.

The Supreme Court held that it was wholly without jurisdiction to consider the first assignment of error, and that as to that there could be and was no appeal pending. It held that the final decree made by it on December 7, 1903, had not been questioned by a motion for re-hearing or suggestion of error during that term, which had expired March 6, 1904, and that the effect was that it was powerless to change the law pronounced at that term, even if it doubted its correctness. It therefore declined to consider at all the first assignment of error under which it was intended again to present the proposition that the contract under which the appellee, S. Prentiss Knut, claimed was void as violative of Section 3477 of the Revised Statutes of the United States. It then declared that the appeal was maintainable as to the error of $36.88 in the decree rendered by the Chancery Court of Adams County, and it reversed the decree and rendered a decree for the true amount. This decree on this appeal is in the following words (Transcript of Record, p. 127):

"This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Adams County, and the court having sufficiently examined and considered the same, and being of opinion that there is error

> therein, doth order, adjudge and decree that the decree of said Chancery Court rendered in this cause on the 23d day of March, A. D. 1904, be and the same is hereby reversed, and this court proceeding now to enter such decree as the court below should have entered, doth order, adjudge and decree that the appellee, S. P. Knut, do have and recover of John K. Nutt, administrator *de bonis non cum testamento annexo* of the estate of Haller Nutt, deceased, the sum of twenty-two thousand one hundred and six and 46-100 dollars. It is further ordered, adjudged and decreed that the appellants have and recover of the appellee, S. P. Knut, the costs of this appeal to be taxes, etc."

The opinion of the Supreme Court of Mississippi on this appeal will be found on page 128 of the transcript of record. It is from this last judgment of the Supreme Court of Mississippi that this appeal is prosecuted.

The forgoing facts, we believe, are all that need to be stated in order that the court may properly understand the grounds of the motion.

ARGUMENT.

The several grounds of the motion will be discussed in the order of their presentation.

(1) For the convenience of the court we will here repeat in full Section 709 of the Revised Statutes, which defines the jurisdiction of this court to re-examine and reverse or affirm upon writ of error the final judgments or decrees of State courts.

> "A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an au-

thority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States;

"The Supreme Court may *reaffirm*, reverse, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ."

The alleged Federal question presented here is predicated of the assertion by appellants in the suit in the Mississippi courts that the contract through which the appellee, Mr. S. Prentiss Knut, recovered the final judgment, rendered by the Supreme Court of Mississippi on May 23, 1904, was void because it constituted an assignment or transfer of an interest in the claim of the estate of Haller Nutt against the United States, in violation of Section 3477 of the Revised Statutes.

It is clear enough, we submit, that where a title, right, privilege or immunity is set up or claimed under the Constitution, or a treaty, statute, or commission, or authority,

unless it was decided against by the final judgment or decree of the State court, which it is sought to have re-examined, the jurisdiction of this court does not attach. It is not sufficient that at some stage of the suit in the State courts such an adverse decision may have been made. It is necessary that the adverse decision should have been made by the final judgment or decree complained of.

When the statute uses the words "and the decision is against the title, right, privilege or immunity specially set up or claimed," it necessarily means a decision by the final judgment or decree complained of. The judgment of the Supreme Court of Mississippi, rendered on May 23, 1904, which is the final judgment from which this appeal is taken, was not a decision against the title, right, privilege, or immunity set up by the appellants and predicated of Section 3477 of the Revised Statutes. The opinion of the Supreme Court of Mississippi expressly declares that that court did not consider the alleged Federal question at all. It declares that the court was without jurisdiction to consider it. And as if this were not sufficient, it declares that as to the merits of the case, which necessarily included the question as to the title, right, privilege, or immunity set up, there could be no appeal from the Chancery Court of Adams County, and that, therefore, there was no appeal pending. The judgment of the Supreme Court of Mississippi, from which this appeal is taken, was rendered without any regard whatever to the alleged title, right, privilege or immunity claimed. That court did not pass upon it, but declared that it had no jurisdiction to do so. The case in the Mississippi courts had, through no contrivance of this appellee, been allowed by the appellants to assume such a shape that the Supreme Court of the State was without jurisdiction to consider their defence in this regard.

Nothing is better settled by this court than that it has

no jurisdiction to examine and reverse or affirm the judgment of a State court unless a Federal question was presented to and passed upon by that court, or unless the court could not have rendered its judgment without deciding against the right, title, privilege or immunity set up. The alleged Federal question which had been raised and considered at another stage of the suit was not before the Supreme Court of Mississippi when it rendered the final judgment appealed from. It held that it had no jurisdiction to consider the alleged Federal question, and that indeed as to the alleged Federal question there was no appeal. By prosecuting an appeal from the final judgment of the Chancery Court of Adams County, rendered on May 23, 1904, the appellants abandoned the Federal question which had theretofore been presented by them. They must be held to have known that the Supreme Court of Mississippi, under that appeal, would have no jurisdiction to consider the Federal question, and indeed they must be held to have known that their appeal would not even carry the Federal question before the Supreme Court of Mississippi. They lost their right to rely upon the said Federal question by taking and prosecuting this appeal from the Chancery Court of Adams County to the Supreme Court of Mississippi. If they have lost the benefit of the Federal question they have themselves alone to blame. They might have prosecuted an appeal with a supersedeas from the judgment of the Supreme Court of Mississippi of December 7, 1903, rendered upon the appeal by the appellee, S. P. Knut, from the decree of the Chancery Court of Adams County, rendered on February 19, 1903. That judgment of the Supreme Court of Mississippi was a final judgment within the meaning of the Judiciary Act, and it could have been brought here by appeal for re-examination by this court. The fact that the cause was remanded to the Chancery

Court of Adams County for an account to be taken to ascertain what payments may have been made to Mr. S. Prentiss Knut on account of his fee, did not have the effect of destroying its character as a final judgment. The Supreme Court itself adjudged and decreed that he was entitled to his prayer for 33 1-3 per cent. of the amount collected by the administrator of $89,999.83 in full for any advances made by him and of services, less any payments made. The accounting ordered was a mere incident to the execution of the judgment of the Supreme Court itself. The whole purpose of the suit had been accomplished and the accounting ordered was only in aid of the execution of the decree and was not a part of the relief prayed for in the bill.

Winthrop Iron Co. v. *Meeker,* 109 U. S., 180.

As said by Mr. Justice McLean in *Craighead* v. *Wilson,* 18 How., 201, the decree was final on "all matters within the pleadings."

In *Beebe* v. *Russell,* 19 How., 283, it was said that the decree is final when ministerial duties only are to be performed to ascertain the sum due.

Under the decree of the Supreme Court of Mississippi nothing was to be done except to ascertain what sums had been paid to Mr. S. Prentiss Knut, and to order paid to him the balance ascertained to be due him.

Instead of availing themselves of their right to prosecute an appeal with a supersedeas from this final decree of the Supreme Court of Mississippi, they suffered the Chancery Court of Adams County to proceed to make the accounting and to enter its final decree directing the specific sum ascertained to be due Mr. Knut to be paid to him; and, then, for the purpose of correcting a

mere clerical error by which the decree was excessive to the amount of a few dollars they prosecuted an appeal from that final decree of the Chancery Court of Adams County to the Supreme Court of Mississippi, which on May 23, 1904, without remanding the case to the Chancery Court of Adams County for any purpose whatsoever, entered a final judgment fixing the precise sum to be paid to the appellee, Mr. S. Prentiss Knut. By this means the appellants have lost their right to complain of the first decree of the Supreme Court of Mississippi and of the final decree of the Chancery Court of Adams County, Mississippi; and they are debarred from asserting any Federal question here for the reason that the Supreme Court of Mississippi in rendering its last and final judgment had before it no Federal question and passed upon none.

(2) In any event, we submit that no Federal question is presented.

Section 3477 of the Revised Statutes declares that assignments or transfers of claims, or a part thereof, against the government shall be null and void. This statute confers no title, right, privilege or immunity upon either party to such a contract. That is to say, it does not confer the right to a pary to make such a contract, and then when sued upon it to assert that the statute gives him such a title, right, privilege or immunity as that he may, if his claim should be decided against him, have the adverse judgment reviewed by this court. He would have the right undoubtedly to plead that the contract was void under the provisions of the statute. No court would enforce such a contract as valid in view of the terms of the statute. But

when he makes such a plea it is of no greater effect than any other defence pleaded by him which would have the effect of annulling a contract. If a suit is brought upon a gaming contract, the defendant may plead that it is null and void. If a suit is brought upon a contract, the consideration of which has failed, he may plead for that reason that the contract is null and void. The statute does nothing more than to make a contract executed in violation of its provisions null and void. A contract void under that statute rests upon the same footing as any other void contract. But it would be a monstrous perversion of the spirit and purpose of Section 3477 of the Revised Statutes and of Section 709 of the Revised Statutes to say that a party might make a contract in violation of the former section, and if his plea that the contract was therefore null and void should be decided against him, that he might, under the latter section, have the judgment of the State court brought here for revision.

Our contention seems to be fully justified by the case of *Walworth* v. *Kneeland,* 15 How., 348. In that case it was ruled where a case was decided in a State court against a party to convey certain lands, and he brought the case up to this court on the ground that the contract for the conveyance of the land was contrary to the laws of the United States, that this was not enough to give jurisdiction to this court under the 25th section of the Judiciary Act. The State court decided against the appellee on the ground that the opposite party was innocent of all design to contravene the laws of the United States. Mr. Chief Justice Taney, however, said:

> "But if it had been otherwise, and the State court had committed so gross an error as to say that a

> contract forbidden by an Act of Congress, or against its policy, was not fraudulent and void, and that it might be enforced in a court of justice, it would not follow that this writ of error could be maintained. In order to bring himself within the 25th section of the Act of 1789 he must show that he claimed some right—some interest—which the law recognizes and protects, and which was denied to him in this State court. But this Act of Congress certainly gives him no right to protection from the consequences of a contract made in violation of law. Such a contract it is true would not be enforcible against him in a court of justice, not on account of his own rights and merits, but from the want of merits and good conscience in the party asking the aid of the court. But to support this writ of error he must claim a right which, if well founded, he would be able to secure in a court of justice upon its own merits and by its own strength. No such right is claimed in the answer of the plaintiff in error."

So we say, as was said by this court in that case, that Section 709 of the Revised Statutes gives no right to protection from the consequences of a contract made in violation of law.

By pleading that a contract in violation of Section 3477 of the Revised Statutes is null and void, no title, right, privilege or immunity is specially set up and claimed. Nothing is claimed by such a plea except that the party suing upon the contract is not entitled to recover because his contract is void.

The meaning of Section 709, Revised Statutes, is well illustrated in *Aldrich* v. *Aetna Insurance Co.*, 8 Wall., 491. There the question was whether the mortgage of a vessel, properly recorded under an Act of Congress, gave a better

lien than an attachment issued under a State statute, and the decision by the State court was that it did not. The construction of the Act of Congress and its force and effect as it respected the mortgage secured, under which defendants claimed a right or title paramount to that of the attachment creditor, was necessarily directly involved and a proper cause for review existed.

So in *Railroads* v. *Richmond,* 15 Wall., 3, in a suit on a contract defendants set up that the contract had been rendered void and of no force and effect by provisions of the Constitution of the United States and of certain Acts of Congress, and the Supreme Court of Iowa was adverse to that defence. In each of these cases the defence was rested upon a title or right of defendants specially claimed under the Constitution and laws of the United States, so jurisdiction obtained.

All of these cases are quoted with approval in the case of *Conde* v. *York,* 168 U. S., 642.

In that case a claimant had made a written transfer to York & Starkweather of an interest in a claim against the government due to him as a contractor. Later on the claimant made an assignment to Conde & Streeter, who were advised when they took the assignment of that which had been made to York & Starkweather. These subsequent assignees got possession of the money and York & Starkweather sued them and recovered. The case was taken to the Court of Appeals of New York, and from that court was brought here. Conde & Streeter pleaded that the assignment to York & Starkweather was in violation of Section 3477 of the Revised Statutes of the United States and that they acquired no right thereunder, and therefore could not maintain their suit. The Federal question which it was alleged gave this court jurisdiction was the denial

of the claim set up by Conde & Streeter that York & Starkweather acquired no interest and could not maintain their suit for the reason that the assignment to them was in violation of Section 3477 of the Revised Statutes. A motion was here made to dismiss the writ of error upon the assumption that no Federal question appeared and the motion was sustained. This court reviewed the opinion of the Court of Appeals of New York quite at length and pointed out that that court had concluded that Section 3477 had been so construed by this court as to permit transfers to be made which, while they might be disregarded by the government, would be sustained as between the parties so far as to enable the transferees, after the government had paid over the money to its contractors, to enforce them against the latter, or those taking with notice. It was pointed out that the Court of Appeals had held the transaction in the case to be substantially that, and that the United States having paid over the money to the contractors, between them there was no dispute, and that the United States had no concern in the question as to which of the rival claimants were entitled to the fund. This court then said:

> "In order to give this court jurisdiction to review the judgment of a State court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be a title or right of the plaintiff in error, and not of a third person only; and the statute or authority must be directly in issue. In this case the controversy was merely as to which of the claimants had the superior equity in the fund; the statute was only collaterally involved; and plaintiff in error asserted no right to the money based upon it."

After quoting from the cases of *Aldrich* v. *Aetna Insur-*

ance Co., 8 Wall., 491, and *Railroads* v. *Richmond*, 15 Wall., 3, to which we have above alluded, this court continued:

> "In each of these cases the defence was rested upon a title or right of defendants specially claimed under the Constitution or laws of the United States, and, being adversely disposed of, jurisdiction obtained. Here, no such contention was put forward. The materials of plaintiffs below had gone into the buildings, while, on the credit of defendants, money had been raised for their construction. Both held written agreements, from the same source, for the money when paid over, but that of defendants below was subsequent in date to the other. Neither asserted any right under Section 3477."

This court then referred to and quoted with approval what was said by Mr. Chief Justice Taney in the case of *Walworth* v. *Kneeland*, 15 How., 348, to which we have also alluded.

This case, we think, is conclusive upon the proposition that one who merely defends against a contract assigning a claim or an interest in a claim against the United States does not raise a Federal question, for the reason that he asserts no right to the money involved, based upon it.

In the case at bar the appellants simply contend that the appellee is not entitled to recover for the reason that the contract upon which he bases his right to recover is void as in contravention of Section 3477 of the Revised Statutes of the United States. But the plaintiffs in error assert no right in themselves to the money claimed by the appellee based upon this section. If their contention be true that the contract through which appellee claims is void under the provisions of this statute, he would not be entitled to

recover. But as said by Chief Justice Taney in the case in 15 Howard, from which we have quoted, it would not be enforcible against appellants on account of their own rights and merits, but from the want of merits and good conscience of the appellee who has asked the aid of the court. But this does not entitle the appellants to a writ of error to his court, for, as said by Chief Justice Taney, to support a writ of error they must claim a right, which, if well founded, they would be able to secure in a court of justice upon its own merits and by its own strength. The appellants claim no such right, and assert no such right. They do not assert that Section 3477 confers any right upon them to the money claimed by Mr. Knut. Their sole contention is that Mr. Knut's contract is void and should not be enforced. The case of *Price* v. *Forrest,* 173 U. S., 410, does not affect our contention. That was not a suit upon a contract of assignment, where the money had been paid by the United States, in which it was pleaded that the assignment was void as violative of Section 3477, Revised Statutes.

Again, as pointed out by this court in *Conde* v. *York, supra,* in order to give this court jurisdiction to review the judgment of a State court against a title or right set up or claimed under a statute of or an authority exercised under the United States, that title or right must be a title or right of the plaintiff in error and not of a third person only.

In the case at bar the title or right, if any was conferred at all by Section 3477, was a title or right first in Mrs. Julia A. Nutt, Executrix, who made the contract with the appellee, then in Mr. Williams, who succeeded her as administrator, and then in Mr. John K. Nutt, who succeeded him as administrator. In other words, the contract was between S. P. Knut, the appellee, and the administrator of the estate of Haller Nutt. Mr. John K. Nutt, Administrator, is not

an appellant and does not complain of the judgment of the Supreme Court of Mississippi. The appellants are not parties to the contract through which the appellee, S. P. Knut, claims, but are third persons so far as the contract between him and the administrator of the estate of Haller Nutt is concerned. Not being parties to the contract, no judgment having been prayed or obtained against them, they have no title or right growing out of Section 3477 which justifies them in invoking the jurisdiction of this court to review the judgment of the Supreme Court of Mississippi. Having no such title or right in themselves, the Supreme Court of Mississippi has not decided against any title or right in them. If it decided against any title or right growing out of Section 3477 at all, it decided against a title or right in John K. Nutt, Administrator, who, as we have stated, is not an appellant here and does not complain.

(3) The appellants were not parties to the judgment rendered by the Supreme Court of Mississippi, and therefore are not entitled to invoke the jurisdiction of this court to review that judgment.

In *Payne et al.* v. *Nile. et al.*, 20 How., 221, this court said:

> "Writs of error to remove the judgment of an inferior tribunal to this court are, under the Acts of Congress, governed by the principles and usages of the common law. And it is very well settled in all common law courts that no one can bring up as plaintiff in a writ of error the judgment of an inferior court to a superior one unless he was a party to the judgment in the court below; nor can any one be made a defendant in the writ of error who was not a party to the judgment in the inferior court."

This adjudication upon the question has never been modified or overruled.

The same rules apply under the statutes to writs of error to review the judgment of a State court as to writs of error to review the judgment of the inferior United States courts.

In *Guion* v. *Liverpool, London & Globe Insurance Co.*, 109 U. S., 173, it was also held that one who is not a party to a decree cannot appeal from it.

The fact that these appellants were allowed to appeal from the decree of the Chancery Court of Adams County, Mississippi, to the Supreme Court of Mississippi, cannot affect the question as to their right to bring the cause here by writ of error.

Bayard v. *Lombard*, 18 How., 551.

It would certainly be singular if this court could entertain the appeal of the appellants from a judgment to which they were not parties, and, if it found error, reverse that judgment, although John K. Nutt, the administrator, the sole defendant in that judgment, has not appealed from it and has not complained of it. Again, if this court should entertain the appeal and should affirm the judgment, the appellee would be entitled to his damages under the statute, and those damages, of course, could only be awarded against John K. Nutt, the administrator, the defendant in the judgment below, who has not appealed and who does not complain. It would seem that a mere statement of the proposition is sufficient.

We submit that the appellants are not entitled to a writ of error to review the judgment of the Supreme Court of Mississippi, and that the writ should be dismissed.

We now respectfully submit that if we are mistaken in supposing that no Federal question is involved, and if it be true that this court has jurisdiction, that the judgment of the Supreme Court of Mississippi should be nevertheless affirmed.

(4) The contract between General Denver and Mrs. Julia A. Nutt, executrix, through which the appellee claims, was not an assignment or transfer of an interest in the claim of the estate of Haller Nutt against the United States. The only clause of that contract which is at all relevant to this question is in the following words:

> "And in consideration therefor the party of the second part agrees to pay the party of the first part a sum equal to 33 1-3 per cent. of the amount which may be allowed on said claim; the payment of which is hereby made a lien upon the said claim and upon any draft, money, or evidence of indebtedness which may be paid or issued therein."

The words used do not constitute an assignment or transfer of an interest in the claim. They are simply intended to fix the sum which General Denver was to receive for his services. The sum to be received by him was to be "equal to 33 1-3 per cent. of the amount which may be allowed on said claim."

We quote as follows from the opinion of the Supreme Court of Mississippi upon this point, and that court leaves little further to be said:

> "So we conclude, on the face of the contract, that the court below erred in so much of the final decree as pronounces it void 'as violative of the United States statute laws.'

"The validity of this contract is in no way disturbed by the case of *Owens* v. *Wilkinson*, Wash. Law Rep., Vol. 30, page 436. This case showed an agreement that the counsel should have an 'interest in said claim equal to one-half of the total amount received at the date of the settlement of said claim by the accounting officers of the treasury,' which is requested 'to be paid to my said attorney.' The contract was an assignment of an interest in the claim in direct contravention of the statute. In the case now before us the agreement is to pay counsel 'a sum equal to 33 1-3 per cent. of the amount which may be allowed on said claim.'

"The difference between 'an interest in' and 'a sum equal to' seems a thin distinction at first glance, but when the reason for, and the language of, the statute are considered, it becomes broad and obvious.

"The Government had no intent to interfere with the free transfers of interests in the affairs of men, except in cases where they interfered with the convenient dispatch of its own business. Its disbursing officers had been harassed by countless notices not to pay, and great numbers of writs of injunction against paying claimants, by parties claiming to be assignees of all or part of the money in the Treasury for the disbursement on private appropriations by Congress. So it forbid 'all transfers and assignments' of any claim 'or of any part or share thereof' or 'interest therein,' and 'all powers of attorney,' etc., for 'receiving payment unless made after the issuance of a warrant for the payment thereof.' It determined that it would deal with the original claimant only and have easy bookkeeping. The distinction is aptly and well stated in the opinion in the case of *Owens* v. *Wilkinson*, above referred to, in the words on page 440, as follows:

"'For the distinction, though subtle, is well established, the one conveying an interest in the fund to be recovered, the other being merely a personal obligation, the extent of which is to be measured by the amount of recovery.'"

The case of *Taylor* v. *Bemiss,* 110 U. S., 43, is conclusive of this question. The tutrix of the estate of John Bemiss having a claim against the United States pending before the Commission created by the Act of March 3, 1871, commonly called the Southern Claims Commission, employed George Taylor and F. C. Wood, attorneys at law, to prosecute it, and by an instrument in writing agreed to give them 50 per cent. of the amount which might be recovered. The sum recovered was $27,310, and under a power of attorney given by her to Mr. Taylor he received from the Treasury $14,598.33, and Mrs. Bemiss the balance of $12,711.67. The minor children of Mrs. Bemiss and of her deceased husband filed a bill in chancery to recover of Taylor & Wood and of Mrs. Bemiss the money thus received. Mrs. Bemiss made her answer a cross-bill against Taylor & Wood and asserted the invalidity of her contract with them, and prayed that they might be required to refund the money which they had received. The court held that Mrs. Bemiss as tutrix had the right and was under obligation to employ counsel to prosecute the claim, and that she therefore had power to make a contract for the amount of their compensation. It held that the contract to pay the attorneys 50 per cent. was binding. This case seems to have involved precisely such a contract as was made between Mrs. Nutt and General Denver.

In the case of *William Dunlap Owen's Admr.* v. *Ernest*

Wilkinson, decided by the Court of Appeals for the District of Columbia, and referred to by the Supreme Court of Mississippi in its opinion, the Court of Appeals commented as follows upon the case of *Taylor* v. *Bemiss:*

> "It would seem that in this case of *Taylor* v. *Bemiss* there had been a contract made between the parties for a fee of 50 per cent. of the amount that might be recovered, or perhaps a fee equal to 50 per cent. of such amount, for the distinction, though subtle, is well established, the one conveying an interest in the fund to be recovered, the other being merely a personal obligation, the extent of which is to be measured by the amount of recovery."

In *Stanton* v. *Embrey,* 93 U. S., 548, the plaintiff as administrator of one Atkinson sued the defendant for $10,000 for services in prosecuting a claim against the United States for the use of certain steamboats. His services were upon a contract for a contingent renumeration, the amount of which was not fixed. The testimony of attorneys prosecuting such claims was to the effect that a contingent fee of from 20 to 25 per cent. was reasonable. Mr. Thos. J. Durant, who represented the defendant, the appellant in this court, and who was an extremely able lawyer, contended that the contract was not enforcible. In his brief he said:

> "A contract to prosecute and collect a claim from one of the departments of the government, in consideration of a percentage on or portion of the amount to be collected is against public policy and the laws, since it virtually assigns a part of the claim, and an interest therein, to him who undertakes the service.

> "The statute in force at the time this contract is alleged to have been made, and the services were rendered, was Sec. 1, Act of February 26, 1853, and is now Rev. Stat., Sec. 3477."

Thus it will be seen that the point was expressly made that such a contract was an assignment of a part of the claim, or an interest in it, and was within the statute. After discussing sundry other questions in the case, this court concluded by saying:

> "Enough has already been remarked to show that the theory of the plaintiffs in error that the contract is prohibited by certain Acts of Congress referred to, cannot be sustained for the reason that the contract was a legitimate one for professional services of an attorney who held no official station at the time the contract was made, nor at any time during the period he was engaged in prosecuting the claim."

The court seemed in this case, in effect, to have decided that a contract for the professional services of an attorney would not be within the condemnation of Section 3477 of the U. S. Rev. Stat., even though it might in terms attempt to convey an interest in the claim for the purpose of compensating him for the professional services to be rendered. In the course of its opinion the court referred to the case of *Wright* v. *Tebbitts,* 91 U. S., 252. In that case the contract sued on was in the following words:

> "Jonas M. Tebbitts, having rendered valuable services to me in securing my claims under the fiftieth article of the treaty of April 28th with the Choctaws and Chickasaws, I hereby bind myself to pay him one-tenth of whatever I may realize from the Choctaw Indians under said article, whenever the money comes into my hands; which payment, when made, will be

> in full compliance with my verbal contract, made in April last, with John B. Luce."

Wright, who made this contract, having refused to pay after realizing on his claim, Tebbitts brought suit to recover compensation for his services and claimed one-tenth. The point was made in this court that the contract was void because it was an assignment of a one-tenth interest in the claim of Wright, and not "freely made and executed in the presence of at least two witnesses, after the allowance of the claim, the ascertainment of the amount due, and the issuance of a warrant for the payment thereof," as required by Section 3477. Upon this point this court said:

> "As to the first objection, all that need be said is that there is no claim of any lien upon the fund. All Wright undertakes to do is to pay 'one-tenth of whatever he may realize from the Choctaw Indians * * * whenever the money comes into his hands.' Tebbitts asserts no claim upon the fund; he only asks that he may be paid by Wright for his services after the money has been collected and in accordance with the stipulations of the contract or memorandum."

This case announces two propositions: First, that the contract did not of its own terms create or attempt to create a lien, or an assignment of an interest in the fund. Second, that even if it had created such a lien, Tebbitts was not thereby prevented from recovering the compensation due him.

We again quote the clause of the contract under which the appellee claimed to be entitled to receive 33 1-3 per cent. of the amount allowed on the claim, as follows:

> "And in consideration thereof, the party of the second part agrees to pay the party of the first part

> a sum equal to 33 1-3 per cent. of the amount which may be allowed on said claim; the payment of which is hereby made a lien upon said claim, and upon any draft, money or evidence of indebtedness which may be issued thereon."

It will be noted that the terms of this stipulation do not vest any right in General Denver to assert this lien against the United States. The lien was to be first upon the claim. As to this it merely meant that the claim being in his possession, Mrs. Nutt should not have the right to take it out of his hands without arranging for paying his fee, and that he should have a lien upon the papers pertaining to it which might come into his possession. It next stipulated that he should have a lien upon any draft that might be issued. This lien was to have effect only after the government had admitted its liability and issued its draft. The enforcement of a lien upon the draft would not have called for the assertion of any claim against the government.

There can be no doubt, we think, under the ruling in *Price* v. *Forrest,* 173 U. S., 410, that General Denver, or the appellee, as his assignee, might have enforced this lien by a bill in any court of equity having jurisdiction to have a receiver appointed and to compel Mrs. Nutt to deliver the draft to the receiver and to endorse it so that he could collect the money. This would have been the means by which he would have enforced his lien upon the contract.

In *Sanborn* v. *Maxwell,* Wash. Law Rep., Sept. 5, 1901, the Court of Appeals for the District of Columbia appointed a receiver and enforced such a lien in just such a case.

To enforce the lien upon the money which might be paid, it would not have been necessary to assert any right against the government. General Denver, or the appellee, could have enforced this lien through any court of equity which could lay its hands upon the money. The same may be

said as to the last stipulation upon "any evidence of indebtedness which might issue thereon," though it is inconceivable how any evidence of indebtedness could issue as claims against the government are settled by draft. We assume that those words really have no meaning whatever.

If the court should be of opinion, however, that so much of the contract as stipulates for this lien is violative of Section 3477 of the United States Revised Statutes, the stipulation that General Denver should receive a sum equal to 33 1-3 per cent. of the amount which might be allowed cannot be at all affected thereby, inasmuch as the two stipulations are independent of each other and clearly severable.

In *Gelpcke* v. *City of Dubuque,* 1 Wallace, 222, it is said;

> "The rule in such cases, where there is no imputation of *malum in se,* is that the bad parts do not effect the good. The valid may be enforced."

See to the same effect the following cases:

Rand v. *Mather,* 11 Cushing, 1;
Leavitt v. *Palmer,* 3 Comstock, 19;
Treadwell v. *Davis,* 34 Cal., 601;
Casady v. *Woodburg,* 13 Iowa, 117.

The appellee claimed nothing by virtue of this stipulation for a lien. He simply applied to the Chancery Court of Adams County, Mississippi, having the sum realized through his services in its hands for distribution, to protect him by directing the administrator to pay him a sum equal to 33 1-3 per cent. of the amount recovered.

Unless the court should be of the opinion that by its terms the contract was clearly an assignment or transfer of an interest in the claim of the estate of Haller Nutt against the United States, it must hold, in accordance with well established principles, that it was not such an assignment or

transfer. That is to say, if there be any doubt as to whether the contract was legal or illegal, the doubt must be resolved in favor of its legality.

In *Hobbs* v. *McLean,* 117 U. S. 576, it is said:

> "For it is a rule of interpretation that where a contract is fairly open to two constructions, by one of which it would be lawful, and the other unlawful, the former must be adopted."

The Supreme Court of Mississippi, as will appear from its opinion on page 114 of the transcript of record, held that this rule was applicable to this contract, and applying it, they held that the contract was valid. They said:

> "Where a contract is capable of two constructions, the one making it good, the other void, it is clear law that the first ought to be adopted."

In support of this proposition they cited the following authorities:

Clay v. *Allen,* 63 Miss., 426;
Merrill v. *Melchoir,* 30 Miss., 516;
Watkins v. *Riley,* 47 Miss., 313.

It certainly cannot be held that the contract under discussion is so clearly an assignment or a transfer of an interest in the claim as that it must be condemned as illegal. If it will bear any other construction, it must be maintained as the Supreme Court of Mississippi held.

(5) The object of Section 3477, United States Revised Statutes, was to protect the Government and not the claimant, and to prevent frauds upon the Treasury. When a claim has been adjudged and the money paid to

the claimant, the purpose of the statute has been fully accomplished, and the government has no concern as to the disposition of the money. When the money has been paid by the government the statute ceases to have any operation. No matter what may have been the earlier interpretation of it, this now seems to be the proper view.

Price v. *Forrest,* 173 U. S., 410;
Bailey v. *U. S.,* 109 U. S., 432;
Hobbs v. *McLean,* 117 U. S., 576;
Freedman Savings & T. Co. v. *Shepherd,* 107 U. S., 494;
Jernegan v. *Osborne,* 155 Mass., 207;
York v. *Conde,* 147 N. Y., 486.

In conclusion we respectfully submit either that the writ of error herein should be dismissed, or that the judgment of the Supreme Court of Mississippi should be affirmed. If that judgment should be affirmed, damages should be allowed as the appeal is clearly frivolous and without merit.

T. C. CATCHINGS,
O. W. CATCHINGS,
Counsel for S. P. Knut, Appellee.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Supreme Court U. S.
FILED
NOV 28 1906
JAMES H. MCKENNEY,
Clerk.

No. 78.

CALVIN R. NUTT, JULIA W. NUTT, AND LILY N. WARD, PLAINTIFFS IN ERROR,

vs.

S. PRENTISS KNUT AND JOHN K. NUTT, ADMINISTRATOR DE BONIS NON C. T. A. OF THE ESTATE OF HALLER NUTT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR DEFENDANTS IN ERROR.

T. G. CATCHINGS,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Defendant in Error, S. Prentiss Knut.

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BRIEF FOR DEFENDANTS IN ERROR.

Statement of Case.

This action was begun in the chancery court of Adams county, State of Mississippi, by S. Prentiss Knut, one of the defendants in error here, by a petition wherein he demanded payment from John K. Nutt, administrator, &c., of the estate of Haller Nutt, deceased, for legal services rendered in prosecuting against and recovering from the United States the sum of $89,999.88 due to said estate.

The plaintiffs in error, Calvin R. and Julia W. Nutt and Lily N. Ward, formerly Lily Nutt, together with Lizzie and Mary Forsythe, children of Carrie R. Forsythe, formerly Carrie R. Nutt, were made parties defendant in the proceeding in order that all parties interested as next of kin in the distribution of the estate of Haller Nutt might be before the court and have an opportunity "of propounding such objections as they may have to the payment by the administrator of petitioner's fee and that the administrator may be thoroughly protected in such payment" (1, 3).

Petitioner set up as the basis of his claim a certain fee agreement made May 18, 1874, by and between James W. Denver, an attorney-at-law in the District of Columbia, and Julia A. Nutt, executrix of the estate of Haller Nutt, deceased, whereby the former agreed to take exclusive charge of a certain claim which the latter had against the United States for the use of property and for property belonging to said Haller Nutt and his estate, of which he and it had been deprived by the officers, soldiers, and employees of the United States in Louisiana and Mississippi in the years 1863, 1864, and 1865, amounting in value to one million dollars ($1,000,000), more or less.

By said contract said Denver bound himself to prosecute said claim before the courts of the United States, the departments of Government, the Congress of the United States, or before any commission or convention which might take cognizance of said claim, and through any diplomatic negotiations which might be deemed best or necessary for and in his client's interest, and in consideration of such services Mrs. Nutt, as executrix of her deceased husband's estate, bound herself to pay said Denver "a sum equal to 33⅓ per cent. of the amount which may be allowed on said claim, the payment of which is hereby made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be issued thereon."

All expenses of printing, costs of court, and commission fees for taking testimony were to be paid by said executrix, who also agreed to execute from time to time such powers of attorney as might be necessary for the prosecution and collection of said claim. (See Exhibit A, p. 4.)

Petitioner also filed with his petition, as "Exhibit B," a power of attorney from Mrs. Nutt, as executrix, &c., to said Denver, authorizing him to prosecute said claim against the Government of the United States and to do and perform all acts requisite and necessary to be done in and about the premises that said executrix might herself do or perform, and also authorizing him to receipt and sign all vouchers and bonds of indemnity or appeal, and to indorse all drafts and vouchers in the name of said executrix "which may be required in the prosecution or collection of said claim, hereby ratifying and confirming all that my said attorney or his substitute may or shall LAWFULLY do or cause to be done by virtue hereof."

Said power of attorney also contained the following clause:

"The compensation of my said attorney being contingent upon the payment or adjustment of said claim this power of attorney is intended to include the protection of his interests, as per agreement of this date, and is irrevocable" (6).

By his petition petitioner informed the chancellor that in the year 1878 he had become associated with said James W. Denver; that as the result of their joint labors the Congress passed the act of August 7, 1882 (22 Stats., 734), whereby said claim was referred to the quartermaster general for examination, adjustment, and a report of facts to be made by him to the Congress; that under said act a mass of evidence in substantiation of said claim was gathered together by the petitioner, and the quartermaster general, having examined the same and made a

finding of fact based thereon, reported said finding to the Congress, and on July 5, 1884, the Congress made an appropriation (23 Stats., 552) in favor of said estate in the sum of $35,556.17 (2), and, as provided by said fee contract, said executrix paid to said Denver on account of such recovery the sum of $11,852.06 as fee and $1,300.43 on account of advances and disbursements (7), and of this payment "petitioner received his due share on account of his services" (2).

The amount so appropriated not being sufficient to fully satisfy the claims, Denver and petitioner made further application to Congress for additional relief (2).

Denver and petitioner, theretofore having become full partners in the practice of the law, in 1866 agreed to dissolve said partnership, and such agreement was consummated by articles of dissolution dated March 19, 1887, by the terms whereof said Denver, with the full knowledge and approval of said Julia A. Nutt, executrix, &c., turned over to the petitioner (2) all his right, title, and interest in and to the claim of said executrix against the Government (7).

Thereafter the petitioner brought suit in the Court of Claims to recover the balances alleged to be due decedent's estate on account of said claim, and from the adverse judgment of that court prosecuted an appeal to this court, wherein the judgment of the lower court was sustained (2, 8, 9).

Thereafter, as the result of petitioner's endeavors in such regard, the claim on February 16, 1887, was referred by the Congress to the Court of Claims for findings of fact under the act of March 3, 1883, commonly called the Bowman act, and thereafter petitioner, with the full knowledge and consent of said executrix, during her lifetime and after her death, with the consent and approval of J. C. Williams, who was appointed administrator *d. b. n. c. t. a.* of said estate, and after his death with the full knowledge, approval, and consent of John K. Nutt, who succeeded said Willams as adminis-

trator *d. b. n. c. t. a.* of said estate, acted in and before said Court of Claims as the sole attorney of record on behalf of said claim (2).

On January 9, 1891, the Court of Claims, after considering much newly introduced testimony and hearing arguments, made favorable findings of fact in support of said claim, but the Congress, on February 20, 1895, again referred said claim to the Court of Claims for re-examination and further findings, and, petitioner having introduced still further evidence before said Court of Claims and having prepared briefs and made arguments in support of said claim, said Court of Claims, on December 9, 1899, made further findings of fact favorable to said claim and reported the same to the Congress (3; and original Exhibit 3, being printed matter sent up with the record, but omitted in printing; also Exhibit F, pp. 8–9).

Thereafter petitioner, still acting as attorney for said estate, made arguments before the proper committees of the House of Representatives and the Senate of the United States, and thereafter the Congress made a further appropriation of $89,999.88 in full settlement of said claim.

Petitioner, as the successor in interest of Denver under said contract, claimed payment for the professional services rendered in accordance with its terms in a sum equal to one-third of the amount so appropriated (3).

The defendants Elizabeth and Mary Forsythe, in obedience to summons duly served, appeared and filed a formal answer to said petition, admitting the receipt by the administrator, John K. Nutt, of said sum of $89,999.88 on account of said claim, and, denying any knowledge of the other matters averred in said petition, submitted their interests to court (13). The administrator, John K. Nutt, having also appeared, acknowledged the receipt of such money by him as such administrator and submitted "to the court the question of the

reasonableness of the fee claimed by S. P. Knut, and prays the instruction of this court as to the payment of the same" (14).

The defendants Calvin R. and Julia W. Nutt and Lily N. Ward also appeared and admitted the receipt by John K. Nutt as administrator, &c., of said sum of $89,999.88 from the Government on account of said claim; that petitioner became associated with Denver in 1878; that in 1882 the Congress referred the claim to the quartermaster general for examination and report of facts; that Julia A. Nutt, as executrix, paid to Denver one-third of the amount appropriated by the act of Congress of July 5, 1884; that petitioner and Denver may have been in full partnership in the year 1886, and that said partnership was dissolved at or about that time, and that Julia A. Nutt, as executrix, paid to said Denver one-third of the amount appropriated by Congress July 5, 1884; they denied that there "was any legal liability resting upon said estate to pay said sum," and also denied that petitioner is entitled to any compensation from this estate by reason of the services alleged to have been rendered by him "before the Court of Claims, the Supreme Court of the United States, or any committee in Congress" (15).

Said answer concluded with the following paragraph:

"While not denying that petitioner has been recognized by the executrix and subsequent administrators of said estate as its attorney of record against the United States Government, yet they deny that there is any legal liability resting upon said estate by reason of said recognition, and respondents now aver and charge the truth and fact to be, that the original contract and power of attorney as assignee of which petitioner claims to recover from the present administrator 33⅓ per cent. of said sum of $89,999.88, were contrary to good morals and public policy, were null and void, so far as they undertook to vest a right to a contingent fee in said Denver, and conferred upon said Denver no rights for the recovery of any fee against this estate, which a court would recognize and enforce. And respondents further charge that said petitioner as assignee of said Denver, occu-

pies no better position than his assignor had, and that as such assignee he has no standing in this court for the enforcement of said void contract, or for the enforcement of any claim whatever for professional services rendered by him, or alleged to have been rendered by him in behalf of said estate in connection with said claim against the United States Government."

Much evidence was taken by the parties, which is set forth at large at pages *16* to *106*, inclusive, of the printed transcript of record and in the mass of original exhibits sent up with the transcript, but omitted in printing. As this court is without jurisdiction in any event to review the decision of the supreme court of Mississippi on a pure question of fact, and as no question of Federal law is supposed to arise out of, from, or about the admission or rejection of any part of such evidence, any analysis of it at this time would appear to be superfluous.

On February 19, 1903, the cause having come on for hearing in vacation by consent of all parties, the chancellor passed a final decree therein as follows:

"The chancellor having fully advised himself in the premises and being satisfied that the contract of Mrs. Julia A. Nutt, executrix of the estate of Haller Nutt, deceased, with General Denver for the prosecution of a claim of said estate against the Government of the United States, and upon which complainant's cause of action is based, is violative of the United States Statute Laws, and being further of the opinion that the complainant in the prosecution of said claim under said contract before the Congress of the United States in procuring and attempting to procure appropriations for the payment thereof, did procure personal solicitations to be made of members of Congress of the United States in behalf of said claim, and for the reasons stated, is not entitled to the relief prayed for in his petition, doth order adjudge and decree that the complainant's petition be and the same is hereby dismissed at his cost" (106-107).

Thereafter, the petitioner tendered his bill of exceptions, which was settled and signed (107), and prayed an appeal from said decree to the supreme court of the State of Mississippi (107), which appeal was allowed and perfected by filing bond in the amount fixed by the chancellor (108).

On this appeal citation was duly issued and served upon (1) Calvin R. Nutt, (2) Julia W. Nutt, (3) Lillie Nutt Ward, (4) Lizzie Forsythe, (5) and Mary Forsythe (110).

Petitioner assigned as errors:

1. The holding by the chancellor that the contract between Mrs. Nutt, executrix, &c., and Denver, was violative of the United States Statute Laws, and for that reason petitioner was not entitled to recover.

2. The holding by the chancellor that petitioner procured personal solicitation to be made of members of Congress of the United States in behalf of the claim described in his petition.

3. The holding by the chancellor that such fact, if it was a fact, would militate against petitioner's right to recover.

4. The refusal of the chancellor to render a decree in petitioner's favor of one-third of the amount received by the administrator, John K. Nutt, under the appropriation by the Congress, and

5. The order of the chancellor dismissing the petition (111–112).

The matter of such appeal having been argued and submitted to the supreme court of the State, that court, on December 7, 1903, reversed the decree appealed from and the petitioner was adjudged and decreed to be entitled to recover from the administrator 33⅓ per cent. of the said sum of

$89,993.83 "in full for any advance made by him and all services less any payment made," and the cause was remanded "for an account to be taken accordingly and for order that any balance of this per cent. unpaid be paid to him by the administrator," appellees (plaintiffs in error here) to pay all costs in both courts (112).

In directing said decree the supreme court of Mississippi rendered an opinion, which the statutes of the State required to be in writing and recorded by the clerk of the court (Annotated Code, Mississippi, 1892, sec. 4352). In the course of its said opinion the court states that by a petition filed in the chancery court S. Prentiss Knut sought to cause John K. Nutt, as administrator of Haller Nutt, deceased, to pay to him 33⅓ per cent. of $89,993.83 recently received by said administrator from the United States Government as "fee for services as attorney-at-law under a written contract with which he is in privity as assignee of it, made between one Denver and Julia A. Nutt, then executrix of Haller Nutt, on May 18th, 1874," and further, that "it is not disputed that if Denver could have recovered, Knut can recover, this being the only contract" (113).

The opinion next refers to the fee contract in question and also to the separate power of attorney to Denver made at the same time, being Exhibits "A" and "B," annexed to Knut's petition (113 and 4 and 5), and finds as a fact that both of said papers were executed before and not after the allowance of the claim and the issuance of the warrant in settlement thereof (referring to section 3477 of the Revised Statutes of the United States), and that said *power of attorney* is therefore void; further, that it had not been acted upon in so far at least as collecting the money or the draft in payment was concerned, and that the money was collected directly by the administrator; also, that the fee contract and the power of attorney were separable, and "the one may

stand while the other falls" (114). The opinion then proceeds as follows:

"The first question for consideration is whether the contract is void on its face. Very clearly it is not unless some special significance be attached to the words 'or through any diplomatic negotiations as may be deemed by him best for the interest of the party of the second part.'

"What these words mean, no one connected with the litigation as counsel seems to know. Certainly this court does not know, but it cannot construe them to convey an illegal meaning. They may mean the mere diplomatic tact or courteous manner or bearing in dealing with objections in the disposition of the items of the claim, which would be the lawyer's duty. They may mean divers things proper and improper, and so the meaning must be attached to them on their face, which would be proper.

"'Where a contract is capable of two constructions, the one making it valid and the other void, it is clear law the first ought to be adopted.' A. & E. Enc. Law 1st ed. vol. 3, p. 869 note; Clay *v.* Allen, 63 Miss. 426; Merrill *v.* Melchoir, 30 Miss. 516; Watkins *v.* Riley, 47 Miss. 313. This question is therefore settled on general common law principles and by the express adjudication of our own courts.

"So we conclude, on the face of the contract, that the court below erred in so much of the final decree as pronounces it void 'as violative of the United States Statute Laws.'

"The validity of this contract is in no way disturbed by the case of Owens *v.* Wilkinson, Wash. Law Rep. vol. 30, p. 436. This case showed an agreement that the counsel should have an '*interest in said claim equal* to one-half of the total amount *received* at the date of the settlement of said claim by the *accounting officers of the Treasury*,' which is requested 'to be paid to my said attorney.' The contract was the assignment of an interest in the claim in direct contravention of the statute. In the case now before us the agreement is to pay counsel 'a sum *equal* to the 33⅓% of the amount which may be allowed on such claim.'

"The difference between 'an interest in' and 'a sum equal to' seems a thin distinction at first glance, but when the reason for, and the language of, the statute are considered, it becomes broad and obvious."

"The Government had no intent to interfere with the free transfers of interests in the affairs of men, except in cases where they interfered with the convenient dispatch of its own business. Its disbursing officers had been harassed by countless notices not to pay, and great numbers of writs of injunction against paying claimants, by parties claiming to be assignees of all or part of the money in the Treasury for the disbursement on private appropriations by Congress. So it forbid 'all transfers and assignments' of any claim 'or of any party or share thereof' or 'interest therein,' and all 'powers of attorney' etc. for 'receiving payment unless made *after* the issuance of a warrant for the payment thereof.' It determined that it would deal with the original claimant only and have easy bookkeeking. The distinction is aptly and well stated in the opinion in the case of Owens *v.* Wilkinson, above referred to, in the words on page 440, as follows:

"'For the distinction, though subtle, is well established, the one conveying an *interest in* the fund to be recovered, the other being merely a *personal obligation*, the extent of which is to be *measured* by the amount of recovery'" (114-115).

The opinion next distinguishes the case at bar from the case of *Trist vs. Child, 21 Wall., 441* (115) and proceeds as follows:

"The decree of the court below, in the case before us, cannot be sustained on the ground that it states that complainant procured personal solicitations to be made *to* members of Congress in behalf of the claim.

"Complainant testifies that he did not and one of the defendants who is interested swears generally that he did. The complainant having exhibited a valid contract and proved legitimate services, the burden of proof was on the defendants to show corruption. But aside from this, it is certain that Mr. Calvin Nutt, the only witness for defendants gives simply his opinion of what were proper personal solicitations, and in no instance states the facts of the colloquium in any interview with any Senator or Representative to enable a court to judge of its propriety. But suppose there were improprieties of this nature committed

in carrying out the valid contract, is it therefore settled that complainant is to have none of the fruits?

"The Government, having paid the money, has no concern in it, and on the facts here, we do not think defendants should have it all, free from obligation to complainant. Our own court is committed to this doctrine.

> "Fewell *v.* Surety Co., 80 Miss., 791; Howe *v.* Jolly, 68 Miss., 324; Gary *v.* Jacobson, 55 Miss., 207; Walker *v.* Jeffries, 45 Miss., 165; Gilliam *v.* Brown, 43 Miss., 659. See also Barry *v.* Capen, 151 Mass., 99; which last case seems directly in point."

The opinion concludes by ordering the decree appealed from to be reversed and a decree to be entered in favor of the petitioner for 33⅓ per cent. of the amount collected by the administrator "in full for any advances made by him and (for) all sevices less any payments made," and that the cause be remanded "for account to be taken accordingly and for order that any balance of this per cent. unpaid be paid to him by the administrator" (116).

Pursuant to this remittitur the case was further considered by the chancery court of Adams county, and it appearing to that court from the report of the master appointed therein to state the account, that on June 10, 1902, there had been paid to the petitioner by John K. Nutt, as administrator, on account of services rendered by the former under said contract the sum of $10,000 (119) and that there was still due to him on such account a balance of $19,999.96, together with $2,106.46 interest, making in the aggregate the sum of $22,106.42 and that *no exceptions had been filed to said report*, the same was confirmed (120), and on March 23, 1904, it was decreed that the petitioner, S. P. Knut, should have and recover from John K. Nutt, as administrator, the sum of $22,143.30, with interest and costs, the latter to be taxed "against the shares of the said Calvin R. Nutt, Julia W. Nutt, and Lily Nutt Ward" (120).

From this decree Calvin R. and Julia W. Nutt and Lily Nutt Ward only again appealed to the supreme court of Mississippi, and their said appeal was allowed to act as *supersedeas* upon their giving bond in the sum of $10,000 (120). Such bond was given, but neither the administrtor, John K. Nutt, nor the defendants Elizabeth and Mary Forsythe joined therein (120) or in the appeal.

Thereupon, at the instance of said three appellants, summons was issued and served upon John K. Nutt, administrator, &c., commanding him to appear and unite in the appeal taken by said Calvin and Julia Nutt and Lily Ward from the decree "rendered against said appellants on the 23d day of March, A. D. 1904, at the March term, A. D. 1904, of said chancery court in favor of said appellee S. P. Knut" (123), but no summons or citation was prayed or issued against the Misses Forsythe, and they were not otherwise made parties to the appeal, and no order of severance was entered in the cause as to them.

In support of their appeal the appellants, Calvin R. and Julia W. Nutt and Lily N. Ward, assigned as errors:

1. The refusal of the court to dismiss the petition of S. Prentiss Knut and the rendition of the decree in his favor and against John K. Nutt, the administrator.

2. That if such a decree was proper it should have been the sum of $22,106.46 only, and not for the sum of $22,143.30, as decreed.

Subsequently it was stipulated between the attorneys representing said appellants and the appellee. S P. Knut that on said appeal "all the evidence taken, and all the pleadings filed *in the original appeal prosecuted by said C. R. Nutt, Lily Nutt Ward and Julia W. Nutt, and the administrator John K. Nutt*, wherein the decree of the court below was reversed,

shall be regarded as forming a part of the record on the present appeal" (121).

Upon consideration of this appeal from the decree of March 23, 1904, the supreme court of the State held that it was without jurisdiction to entertain the same as to the first assignment of error, as, so far as that was concerned, it was but "an effort to relitigate an adjudicated controversy;" that a final decree had been entered, pursuant to its former opinion and order, "on December 7, 1903, and the term expired March 6, 1904, and we are powerless now to change the law of the case pronounced at that term, even if we doubted its correctness, which we do not, so as to that there can be, and therefore is, no appeal pending. There was no motion for rehearing nor suggestion of error presented."

B. & A.'s Dig., p. 673, clause 49 *et seq.*; 73 Miss., 463; 46 Miss., 666; 54 Miss., 621 (128).

With respect to the second assignment of error, the court held that "by clerical misprision or inadvertence, no doubt," the decree was rendered for $36.88 too much, and on that ground alone the decree was reversed and a decree ordered to be entered for $22,106.46 against John K. Nutt, administrator *de bonis non cum testamento annexo* of the estate of Haller Nutt, deceased, in favor of S. P. Knut (129), and judgment was entered accordingly (127).

To review the judgment of December 7, 1903, of the supreme court of the State, Calvin R. and Julia W. Nutt and Lily N. Ward then applied for a writ of error from this court, and the same was allowed (130), John K. Nutt, administrator, &c., having refused to join therein (134). No citation or summons was issued against the Misses Forsythe in connection with such writ of error, and no attempt what-

ever has been made to make them parties defendant or otherwise in this court.

In the support of said writ of error plaintiffs in error assigned errors as follows:

"1. The supreme court of the State of Mississippi erred in rendering judgment and decree of December 7th, 1903, whereby the said written contract in controversy in this cause, and the said power of attorney executed pursuant thereto, were held to be valid and enforcible and not void because repugnant to the provisions of section 3477 of the Revised Statutes of the United States.

"2. The said supreme court of the State of Mississippi erred in rendering judgment and decree of May 23rd, 1904, whereby the said written contract in controversy in this cause, and the said power of attorney executed pursuant thereto, were held to be valid and enforcible and not void because repugnant to the provisions of section 3477 of the Revised Statutes of the United States.

"3. The said supreme court of the State of Mississippi erred in rendering the judgment and decree of December 7th, 1903, and of May 4th, 1904, whereby the said written contract in controversy in this cause and the said power of attorney executed pursuant thereto, were held to be valid and enforcible and not void because repugnant to the provisions of section 3477 of the Revised Statutes of the United States" (135).

As the writ of error from this court does not run to or describe the final judgment of the State supreme court *of May 23, 1904*, same would appear not to be before this court for review, and so much of the assignments of error as refer thereto may and should be disregarded.

ARGUMENT.

The Writ of Error Should be Dismissed.

First. Because the record shows that there were other parties to the judgments of the State supreme court, jointly interested therein with the plaintiffs in error, who have not joined in the writ of error nor been eliminated from the cause by an order of severance, nor have they been served with notice of the proceedings in error.

Second. Because, irrespective of the above, this court is without jurisdiction to entertain the writ of error for want of a Federal question raised at the proper time and in the proper manner by or on behalf of the plaintiffs in error or any of them.

FIRST.

In Masterson *vs.* Herndon, 10 Wallace, 416, it was said:

"It is the established doctrine of this court that in cases at law, where the judgment is joint, all the parties against whom it is rendered must join in the writ of error; and in chancery cases, all the parties against whom a joint decree is rendered must join in the appeal or they will be dismissed. There are two reasons for this: (1) That the successful party may be at liberty to proceed in the enforcement of his judgment or decree against the parties who do not desire to have it reviewed. (2) That the appellate tribunal shall not be required to decide a second and third time the same question on the same record."

In such cases no importance is to be attached to the technical mode of proceeding called summons and severance, but it is settled that it must appear in some way from the record that the missing parties have been notified to appear and had failed to do so, or, if appearing, had refused to join.

In the opinion of this court, delivered by Mr. Chief Justice Fuller, in the case of Meagher *vs.* Minnesota Thresher Mfg. Co., 145 U. S., 608, 611, it is said:

"It will be observed that plaintiffs in error are only a portion of the defendants who were proceeded against by the intervening petition, and what has become of the others does not appear. The case should have been determined as to all, before our interposition, if justifiable in any view, could be invoked."

To like effect are Feibelman *vs.* Packard, 108 U. S., 14; Estis *vs.* Trabue, 128 U. S., 225; Mason *vs.* U. S., 136 U. S., 581; and Hardee *vs.* Wilson, 146 U. S., 179.

The defendants and appellees, Lizzie and Mary Forsythe, were equally interested with the plaintiffs in error in the decree with respect to which error is alleged. Neither of them joined in the writ of error, nor was either of them notified of the proceedings in error in this court, nor has any effort been made to make them parties thereto.

SECOND.

In neither of the State courts was there drawn in question the validity of a treaty or statute of or an authority exercised under the United States, nor was there drawn in question the validity of a statute of or an authority exercised under any State on the ground of their being repugnant to the Constitution, treaties or laws of the United States. Therefore if this record presents any Federal question at all it must have arisen under the third clause of section 709 of the Revised Statutes providing for a writ of error from this court to the highest court of a State in cases wherein "any title, right, privilege, or immunity is claimed under * * * any * * * statute of * * * the United States, and the decision is against the title, right, privilege

or immunity specially set up or claimed under such * * * statute."

This was a simple action by S. Prentiss Knut in a State court against John K. Nutt, administrator of Haller Nutt, deceased, to enforce payment by the latter of a sum of money alleged to be due to the former by reason of professional services rendered to said administrator and his predecessors in interest in connection with the administration of the affairs of said estate. Petitioner's services had been rendered in making the recovery of a large sum of money from the United States on a claim preferred on behalf of the estate of said Haller Nutt, and petitioner based his claim of right to receive compensation upon a contract in writing wherein and whereby the executrix of Haller Nutt agreed to pay for such services "A SUM EQUAL TO 33⅓ per cent. of the amount which may be allowed in said claim," the payment thereof being "made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be issued thereon."

By an amendment to his petition the petitioner also asserted his right to receive compensation for such services upon the basis of a *quantum meruit*, and averred that his said services were reasonably worth thirty thousand dollars.

The petition itself did not claim any lien upon the funds in the hands of the administrator, but merely advised the court of petitioner's desire "to receive payment from the administrator in accordance with the contract filed herewith."

The administrator, John K. Nutt, appeared in pursuance of this petition and, without in anywise objecting to the validity of the contract sued upon, answered that, as he was "advised that allowance will be made to him by this court for the payment of attorneys' fees, only when the amount of such attorneys' fees is deemed reasonable by the court," he submitted "to the court the question of the reasonableness

of the fee claimed by S. P. Knut" and prayed the instruction of the court as to the payment of the same (14).

The plaintiffs in error in this court, in connection with other next of kin and devisees, also appeared before the chancellor in connection with said petition for payment and asserted that the original contract and power of attorney under which petitioner claims to recover "were contrary to good morals and public policy, were null and void so far as they undertook to vest a right to a contingent fee in" petitioner's predecessor in interest, and conferred "no rights for the recovery of any fee against this estate, which a court would recognize and enforce."

And that petitioner "has no standing in this court for the enforcement of said void contract, or for the enforcement of any claim whatever for professional services rendered by him or alleged to have been rendered by him in behalf of said estate in connection with said claim against the United States Government."

No reference was made in this, or in any other of the answers which were filed, to the Constitution or laws of the United States, and no title, right, privilege, or immunity under said Constitution or laws was at any time specifically set up and claimed by the plaintiffs in error or any of the other parties to the proceedings. For aught that appears from the pleadings, it may well have been that the plaintiffs in error, when answering as respondents below, intended to assert merely that the contract in question was null and void because it was against the morals and public policy of the State of Mississippi as expressed either in its constitution or its local laws; and in cases of this class, in the absence of an express reference in the pleadings to the Federal Constitution or to the Federal laws, the presumption will be that the respondent grounded his defense solely upon the local law.

Assuming that the plaintiffs in error, in the absence of any such objection on the part of the administrator, who, besides the petitioner, was the sole privy to the contract sued upon, had the right to urge that the contract was invalid because forbidden by the laws of the United States, still, in order to enable this court to review the judgment of the State supreme court, the intention to raise a Federal question must clearly appear from express averments and not by inferences to be drawn from the record, and the claim of title or immunity under the Federal law must have been expressly asserted at the first opportunity occurring in the course of the progress of the cause. In the case at bar such opportunity clearly occurred at the time of the filing of the response to the petition.

Oxley Stave Co. *vs.* Butler County, 166 U. S., 648, 655.
Colorado Central Mining Co. *vs.* Turck, 150 U. S., 138.
Borgmeyer, adm'r, *vs.* Idler, 159 U. S., 408.

It is evident from the whole course of the case that plaintiffs in error sought to defeat payment to S. P. Knut not upon the ground that the contract sued upon was rendered void by the terms of section 3477 of the Revised Statutes, but because of the suggestion that Knut's action and services in securing payment of the claim had been tainted by *lobbying*, and hence were opposed to sound public policy. The contention was resolved against them upon the proof by the State supreme court and rightly so, for a contract legal upon its face and at its inception does not become illegal because in its execution one of the parties thereto may have done something contrary to the policies of the law.

Barry *vs.* Copen, 151 Mass, —.
Jernegan *vs.* Jordan, 155 Mass., 207.

But if the law was otherwise the supreme court of Mississippi found against plaintiffs in error upon the question

of fact as to whether personal solicitation of congressmen or "lobbying" had been practiced by Knut. It is true that the chancellor decreed that the contract with Denver, upon which petitioner rested his action, was "violative of the United States statute laws," but it nowhere appears that the plaintiffs in error had specially set up and claimed any immunity under said statute laws personal to themselves, or in anywise brought in question the validity of the contract.

To enable this court to review the judgment of the supreme court of a State it must not only appear that a Federal question was actually and intentionally raised at the proper time and in the proper way during the progress of the cause by a party thereto who was entitled to raise such question in his own right, but it must also appear that such Federal question was actually and necessarily passed upon and decided by said State supreme court adversely to the right or immunity set up and claimed, and that the State court did not at the same time decide any other point in the cause of a purely State or local nature broad enough to support the judgment.

Assuming *arguendo* that the plaintiffs in error had the right in their own behalf to attack the contract sued upon by petitioner as being void because violative of the provisions of section 3477 of the Revised Statutes of the United States, even though no such objection was made by the administrator, and assuming also that the answer filed by plaintiffs in error was sufficient in form to raise such issue, it is not perceived what right or immunity under the statutes of the United States personal to themselves and claimed by plaintiffs in error was decided against by the judgment under review.

It cannot be said that any statute of the United States conferred upon the plaintiffs in error the right to avail themselves of the professional services of the defendant in error without making to him compensation therefor, nor that, such services having been rendered for their benefit and

with their knowledge and acquiescence, any statute of the United States granted them immunity from the consequent obligations which upon principles of common law attach to such a condition. At best such right, privilege, or immunity is, if it existed at all, the right, privilege, or immunity of the executrix or administrator with the will annexed, and if he refused to make the objection no one claiming under him could be heard to make it. But under the authorities hereinafter referred to even the executrix or administrator in a State court could not raise such a question in any such manner as would give this court jurisdiction to review its decision thereabouts on writ of error.

Considering the contention of plaintiffs in error in this regard, the supreme court of the State held as matter of fact that neither in terms nor in effect did the contract sued upon violate the prohibitions of the Federal statute referred to, and that such decision was justified must be apparent to even the casual investigator, but if it were otherwise and the State court had in fact committed error in deciding a contract within the express terms of the prohibition of the Federal law to be valid, not even that fact would confer upon this court jurisdiction to review and reverse the judgment complained of.

In Walworth *vs.* Kneeland, 15 Howard, 348, a bill in equity had been filed in a proper State court to compel the conveyance of a certain tract of land under a contract in writing. The defendant, among other grounds, defended upon the ground that the contract sued upon was void because made in violation of the provisions of the act of Congress of March 3, 1807, entitled "An act to prevent settlements being made on lands ceded to the United States until authorized by law" (2 Stats., 445), it being averred by him that the object and purpose of the contract in question was to prevent competition for public lands when offered at

auction by the Government, and was therefore against the policy of said statute.

On the final hearing the instance court decided against the contention of the defendant and directed him to make a conveyance of the lands in dispute in accordance with the terms of the contract sued on. On appeal to the supreme court of the State that decree was affirmed, and to review that decree the case was brought to this court on writ of error.

In disposing of the matter this court in its opinion, speaking through Mr. Chief Justice Taney, said:

"Upon looking into the proceedings in the State court, we should be at a loss to understand how this court could be supposed to have jurisdiction upon this writ of error, over any of the questions decided in the State court, if the printed argument in behalf of plaintiff in error had not pointed to the one on which he relies. For we do not see that Walworth (the defendant) set up any right or title under an act of Congress; or that any of the contingencies took place at the trial which gave jurisdiction to this court under the twenty-fifth section of the act of 1789.

"But it appears that he claims the right to remove to this court upon the following grounds: * * * That these contracts were in violation of the acts of Congress, in relation to the sales of public lands, and contrary to public policy, and, therefore, void. * * *

"It is due to the State court to say that in its decree, it declares that such a contract would be void and it decreed in favor of the complainants upon the ground that it was not proved, by legal testimony that either Frisbee or Arnold (complainants' predecessors in interest) had undertaken to associate themselves with the illegal combination of settlers, or to use any other unlawful means, to enable Walworth to buy the land in question at a reduced price."

"But if it had been otherwise, and the State court had committed so gross an error as to say that a contract forbidden by an act of Congress, or against its policy, was not fraudulent and void, and that it might be enforced in a court of justice, it would not follow that this writ of error could be maintained. In order to bring himself within the 25th sec-

tion of the act of 1789 he must show that he claimed some right—some interest—which the law recognizes and protects, and which was denied to him in this State court. But this act of Congress certainly gives him no right to protection from the consequences of a contract made in violation of law. Such a contract it is true would not be enforcible against him in a court of justice, not on account of his own rights and merits, but from the want of merits and good conscience in the party asking the aid of the court. But to support this writ of error he must claim a right which, if well founded, he would be able to secure in a court of justice upon its own merits and by its own strength. No such right is claimed in the answer of the plaintiff in error." * * *

"And indeed it would be a novelty in legislation and in public policy if Congress had taken so much pains to provide for the protection of persons who had combined with others to perpetrate a fraud upon the United States, and found themselves in the end the sufferers by the speculation; or who, by the error of a State court, had been compelled to share its (their) gains with their associates in the fraud. The right or interest claimed in the State court must be of a very different character to entitle him to the protection of the act of 1789. It has already been so decided in this court in the case of Udell *et al. v.* Davidson, 7 Howard, 769."

The writ of error was dismissed for want of jurisdiction.

In concluding its opinion in that case the court observed that—

"the construction of that agreement, and the rights and obligations of the parties under it were questions exclusively for the State court; and over its decree in this respect this court has no control."

In Conde *vs.* York, 168 U. S., 642, suit had been brought in the supreme court of New York for the county of Jefferson to recover moneys due upon a certain contract in writing, which, among other things, recited that the obligors had a contract with the United States Government for the construction of certain quarters and other buildings at Madison barracks, Sacketts Harbor, New York; that obligors were

indebted to obligees, York and another, in the sum of $3,000 and more for materials furnished; that considerable sums would become due to obligors from the United States on the completion of said works, and of such moneys

"due and to become due to us from the said Government, we do hereby for value received assign and transfer to said York & Starkweather the sum of $3,000 and do hereby authorize, empower, request and direct * * * (the United States disbursing) officer through whom payments are made for such construction, to pay to said York & Starkweather on our account for such construction the full sum of $3,000." * * *

The defense interposed was that the contract sued upon constituted and was an assignment of an interest in a claim against the United States, and therefore was "in violation of the laws of the United States and of the State of New York."

Judgment having been entered in favor of the plaintiffs and affirmed as entered by both the supreme court of the State in general term and the court of appeals, the case was brought into this court on writ of error.

In its opinion this court, speaking through Mr. Chief Justice Fuller, said:

"In order to give this court jurisdiction to review the judgment of a State court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be a title or right of the plaintiff in error, and not of a third person only; and the statute or authority must be directly in issue. In this case the controversy was merely as to which of the claimants had the superior equity in the fund; the statute was only collaterally involved; and plaintiff in error asserted no right to the money based upon it."

Then referring to the cases of Aldrich *vs.* Ætna Ins. Company, 8 Wallace, 491, and Railroads *vs.* Richmond, 15 Wallace, 3, which had been relied upon by the plaintiffs in error to support the jurisdiction of this court, the learned Chief Justice proceeds as follows:

"In each of these cases the defence was rested upon a title or right of defendants specially claimed under the Constitution or laws of the United States, and, being adversely disposed of, jurisdiction obtained. Here, no such contention was put forward. The materials of plaintiffs below had gone into the buildings, while, on the credit of defendants, money had been raised for their construction. Both held written agreements, from the same source, for the money when paid over, but that of defendants below was subsequent in date to the other. Neither asserted any right under section 3477."

Next citing with approval the extract from the opinion of the court in Walworth *vs.* Kneeland, above quoted at length, and the conclusion of the State supreme court to the effect that section 3477 of the Revised Statutes U. S. had been so construed by the Supreme Court of the United States as to permit transfers made in the course of business, in good faith, to secure an honest debt, while they might be disregarded by the United States, to be sustained as between the parties so far as to enable the transferees, after the Government had paid over the money to enforce such transfers against the payee, saying: "The United States had, in due course, paid over the money to the contractors and between them there was no dispute; nor had the United States any concern in the question as to which of the rival claimants was entitled to the fund, the proper distribution of which depended upon the equities between them," the opinion concluded by directing the writ of error to be dismissed.

In Leyson, adm'r, *vs.* Davis, 170 U. S., 36, the controversy was as to the ownership of certain shares of stock in a national bank, which shares were claimed as a *donatio causa mortis* by the defendant Davis, such claim being disputed by the administrator of the donor's estate on the ground that the transfer of the stock had not been made upon the books of the bank as required by its by-laws, pursuant to section 5139 of the Revised Statutes of the United States.

To review the judgment of the supreme court of Montana

affirming the decree of the district court of Montana for Silver Bow county in favor of Davis and against the administrator, the case was brought to this court upon writ of error.

In disposing of the cause by dismissing the writ of error for want of jurisdiction, this court, again speaking through Mr. Chief Justice Fuller, said:

"But these matters raised no Federal question. The rights of third parties, or of creditors, or of the bank, were not in issue or determined here, but simply the equities as between the particular parties. The representative of the donor was manifestly bound by the donor's valid acts, and could assert no title superior to his. His right to make the gift was the right to dispose of his own property, and whether as between him and his donee the equitable title passed was a question of general or local law. The administrator's claim that he was entitled to receive the stock as representing the estate or for the benefit of the next of kin rested on that law as administered by the courts of the State.

* * * * * * *

"We cannot perceive that any title, right, privilege, or immunity was specially set up or claimed by the administrator under a law of the United States and denied by the highest tribunal of the State, which is the ground of jurisdiction relied on. The controversy was merely as to which of the claimants had the superior equity to these shares of stock, and the national banking act was only collaterally involved."

In Allen, adm'r, *vs.* Arguimbau, 198 U. S., 149, the suit was upon promissory notes, and the defendants, by their pleas and as a defense, asserted that said notes were invalid because given under an agreement involving, or at least contemplating, a violation of the internal-revenue laws of the United States. To such pleas plaintiff interposed demurrers, which were sustained by the circuit court of Monroe county, Florida, and the decision of that court having been affirmed by the supreme court of Florida, the case came to this court on writ of error.

Upon consideration the writ of error was dismissed on the authority of Walworth *vs.* Kneeland, above cited, the court in its opinion, speaking again through Mr. Chief Justice Fuller, saying:

"The only ground on which our jurisdiction can be maintained is that defendant specially set up or claimed some title, right, privilege or immunity under a statute of the United States, which was denied by the State court. * * *

"But * * * no title, right, privilege or immunity under a statute of the United States, within the intent and meaning of § 709 of the Revised Statutes, was specially set up or claimed by defendant, and decided against.

"Sections 3390, 3393, and 3397 of the Revised Statutes are regulations to secure the collection of the taxes imposed by chapter 7, title 35, and defendant could derive no personal right under those sections to enforce the repudiation of his notes, even although, on grounds of public policy, they were illegal and void."

The principles so firmly established by these decisions would seem to be conclusive when applied to the case at bar, and to render further argument upon the question as to the jurisdiction, or, rather, want of jurisdiction, in this court to retain this writ of error unnecessary.

In the case of Goodman *vs.* Niblack, 102 U. S., 556, this court, speaking through Mr. Justice Miller, said:

"The statute (§ 3477, R. S. U. S.) has several times within the last few years received the consideration of this court. * * * Both these considerations as well as a careful examination of the statute leave no doubt that its sole purpose was to protect the Government and not the parties to the assignment."

To like effect are Bailey *vs.* United States, 109 U. S., 432; Freedman's S. & T. Co. *vs.* Shepherd, 127 U. S., 495, and Price *vs.* Forrest, 173 U. S., 410, 419.

Conceding *arguendo* that the contract in suit in terms fell within the prohibitions of section 3477 of the Revised Stat-

utes, it is certain that that statute conferred no right, priviledge, or immunity upon plaintiffs in error which they could assert in a State court in endeavoring to prevent compliance by the administrator with the plain obligation of his contract in any such manner as to render the decision of such court enforcing the contract reviewable by this court.

The money has been paid by the United States to the person entitled under the laws of Mississippi to receive it. With or in its distribution to the beneficiaries of Haller Nutt's estate entitled to receive it under his will or the laws of Mississippi neither the United States nor this court has any concern. The sole question in that connection in the State courts related to the equities of the respective parties; and that in fact and effect was the sole question which the State supreme court decided. The decision of such a question presents no matter of Federal law or concern of which this court can take cognizance.

Reference to the case of Trist *vs.* Childs, 21 Wall., 441, cannot help the plaintiffs in error upon this point, for there the APPEAL to this court was from the supreme court of the District of Columbia, and the amount in controversy being in excess of the jurisdictional amount required by the statute authorizing appeals to this court then in force, no jurisdictional question requiring decision by this court was involved.

MERITS.

The supreme court of Mississippi held (1) that the contract between Mrs. Julia A. Nutt, the executrix of Haller Nutt, and James W. Denver, upon which as assignee S. P. Knut bases his right to recover compensation for professional services rendered to said estate, did not purport to be nor amount to an assignment of an interest in a claim against the United States, and (2) that it did not contem-

plate lobbying on the part of Denver or Knut, and (3) that no lobbying on the part of the latter had been proved.

In so far as such decision rested upon a mere findings of fact, as, for example, that no lobbying on the part of Knut had been shown, it is clearly not open for consideration or review in this court, for on a writ of error to review the judgment of a State court nothing is open for re-examination but questions of law arising upon the face of the record. The facts found by the State court will furnish the basis for the decision of this court.

Quimby *vs.* Boyd, 128 U. S., 489;
Dower *vs.* Richards, 151 U. S., 658;
Egan *vs.* Hart, 165 U. S., 188;
Thayer *vs.* Spratt, 189 U. S., 346;
Adams *vs.* Church, 193 U. S., 510,

and many other cases.

Should the question as to whether the contract sued on did, by reason of its terms, fall within the prohibitions of section 3477 be thought to be open for consideration and determination here, we reinvite attention to the full argument upon this point at pages 23 to 32, inclusive, of the brief of Messrs. T. C. and O. W. Catchings, heretofore submitted on behalf of S. Prentiss Knut in support of the motion to dismiss or affirm.

Upon the whole case, we submit that the writ of error should be dismissed for want of jurisdiction or the decree of the supreme court of Mississippi should be affirmed.

T. C. CATCHINGS,
F. D. MCKENNEY,
J. S. FLANNERY,
Attorneys for Defendant in Error, S. Prentiss Knut.

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Office Supreme Court U. S.
FILED
JAN 24 1906
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 78.

CALVIN R. NUTT, JULIA W. NUTT, AND LILLIE N. WARD, PLAINTIFFS IN ERROR,

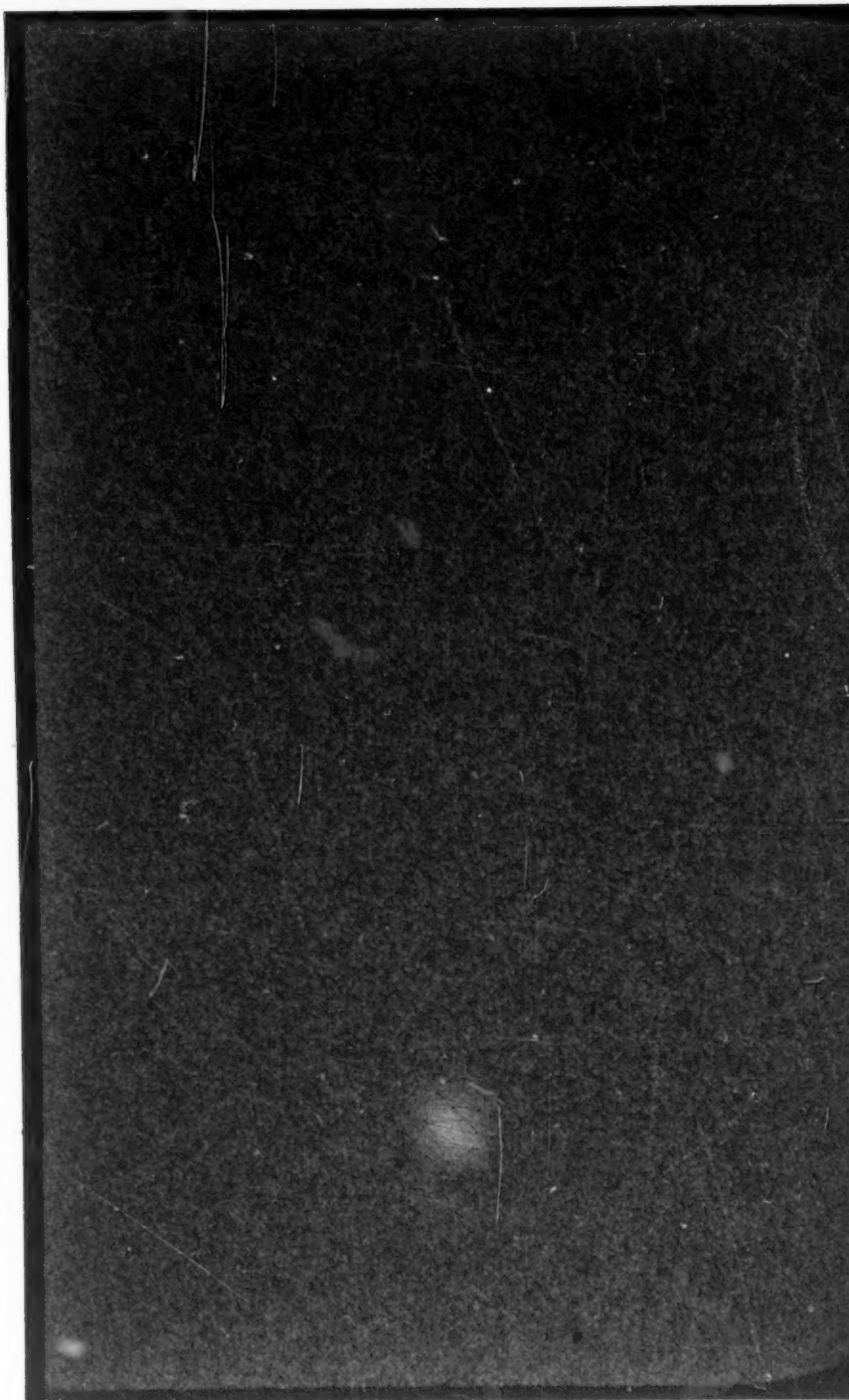
vs.

S. PRENTISS KNUT AND JOHN K. NUTT, ADMINISTRATOR, &C.

MOTION FOR ORDER DIRECTING MANDATE TO ISSUE FORTHWITH.

F. D. McKENNEY,
Attorney for S. Prentiss Knut.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 20004



SUPREME COURT OF THE UNITED STATES.

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vs.

S. PRENTISS KNUT AND JOHN K. NUTT, ADMINISTRATOR, &C.

Motion for Order Directing Mandate to Issue Forthwith.

Now comes S. Prentiss Knut, by his attorney, Frederic D. McKenney, and, representing to this honorable court that judgment was deliverd in the above-entitled cause on January 2, 1906, prays that the mandate of this court to the supreme court of Mississippi may be issued forthwith, notwithstanding the full period of thirty (30) days since the date of rendition of said judgment, as prescribed by the rules of practice pertaining to such matters, has not yet fully run, and as ground for said motion petitioner shows this court that the chancery court of Adams county, in the State of Mississippi, wherein the above-entitled action originated and which said court must finally dispose of the issues, holds, as provided by law, but two terms a year,

which said terms ordinarily convene on the first Mondays of February and October respectively; that said chancery court is about to be convened for the February term on Monday, the 5th day of February, next; that said court ordinarily remains in session not longer than a week to ten days; that unless the mandate of this court can be brought to its attention at said February term it is more than probable that action cannot be had thereon until after the court shall have reconvened for the October term next; that such event would work a great hardship to the petitioner by further and unnecessarily delaying the settlement of the estate of his father, Haller Nutt, deceased, in which settlement petitioner is interested not only as a creditor by reason of services rendered, but also as next of kin entitled to participate in its distribution; that in so far at least as the distributive shares of the next of kin of said Haller Nutt, deceased, are concerned there will be no possibility of recovering damages for such delay in the way of interest, and if it be true that the judgment of this court heretofore entered in his favor bears interest, nevertheless such delay in the settlement thereof would result in unnecessarily reducing the distributive shares of other next of kin, who are not parties to the pending litigation nor in sympathy with it.

Wherefore petitioner prays that the mandate of this court may be issued forthwith.

S. Prentiss Knut,
By F. D. McKenney,
His Attorney.

District of Columbia, *ss*:

I, S. Prentiss Knut, being first duly sworn, do depose and say that I have read the foregoing motion and am fully acquainted with the contents thereof; that the statements of fact therein contained are true to the best of my knowledge, information, and belief.

S. Prentiss Knut.

Subscribed and sworn to before me this 23d day of January, A. D. 1906.

[SEAL.]

WILLIAM SELBY,
Notary Public, D. C.

A. S. WORTHINGTON, Esq.,
Attorney for Calvin R. Nutt,
Julia W. Nutt, and Lillie N. Ward:

Please take notice that I will present to the Supreme Court of the United States the foregoing motion and accompanying affidavit on Friday, the 26th day of January, A. D. 1906, at 12 o'clock, or as soon thereafter as counsel can be heard.

F. D. MCKENNEY,
Attorney for S. Prentiss Knut.

Service of a copy of the foregoing motion and notice acknowledged this 23d day of January, A. D. 1906.

A. S. WORTHINGTON,
Attorney for Plaintiffs in Error.

Supreme Court of the United States.

No. 78.—October Term, 1905.

Calvin R. Nutt, Julia W. Nutt, and Lilly N. Ward, Plaintiffs in Error, vs. S. Prentiss Knut and John K. Nutt, Administrator *de bonis non c. t. a.* of the Estate of Haller Nutt, Deceased.	In error to the Supreme Court of the State of Mississippi.

[January 2d 1906.]

Mr. Justice Harlan delivered the opinion of the Court.

This suit was brought in the Chancery Court of Adams County, Mississippi, the plaintiff being S. Prentiss Knut, a defendant in error, and the defendants being the administrator, heirs and devisees of Haller Nutt, deceased.

It was based upon a written contract between the late James W. Denver and the (then) executrix of Haller Nutt, deceased, as follows: "That the party of the first part (Denver) agrees to take exclusive charge and control of a certain claim which the party of the second part (executrix of Nutt's estate) holds against the Government of the United States, for the use of property and for property of which the said Haller Nutt and his estate was deprived by the acts of officers, soldiers and employees of the United States in Louisiana and Mississippi, in the years 1863, 1864 and 1865, amounting to one million of dollars, more or less, and to prosecute the same before any of the courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the departments of Government, or before the Congress of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or through any diplomatic negotiations as may be deemed by him for the best interests of the party of the second part. And in consideration therefor the party of the second part agrees to pay the party of the first part a sum equal to 33⅓ per cent of the amount which may be allowed on said claim, the payment of which is hereby made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be issued thereon. This agreement not to be affected by any services performed by the claimant, or by any other agents or attorneys employed by him. All expenses of printing, costs of court and commission fees for taking testimony are to be charged to the party of the second

part, and the party of the second part agrees to execute from time to time such powers of attorney as may be convenient or necessary for the successful prosecution and collection of said claim. No revocation of any authority conferred on the party of the first part by this agreement or any power of attorney relating to the business covered by the same to be valid."

On the same day the executrix of Nutt executed to Denver a power of attorney, constituting the latter her attorney "irrevocable," for her and in her name and stead "to prosecute a certain claim against the Government of the United States, for property used and for property of which said Haller Nutt and his estate was deprived by United States officers, soldiers and employees in Louisiana and Mississippi, amounting to one million dollars, more or less, before any court of the United States, or before any of the departments of the Government, or before the Congress of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or through any diplomatic negotiations, to collect the same; and from time to time to furnish any further evidence necessary, or that may be demanded, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers and bonds of indemnity or appeal and to indorse all drafts and vouchers in my name, either by or without indicating it is done by procuration, which may be requisite in the prosecution or collection of said claim, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do, or cause to be done by virtue hereof."

The petition shows, and it is not disputed, that the plaintiff succeeded to all the rights, whatever they were, of Denver under the above contract, and that as the result of his labors Congress at different times appropriated, on account of the Nutt claim, the sums of $35,556.51 and $89,999.88. 23 *Stat.* 586; 32 *Stat.* 212. Prior to the bringing of the present suit the plaintiff had received his "due share" of the first appropriation, but has not received his full part of the last one. He therefore sought payment, in accordance with the contract, for the balance due him on account of the said sum of $89,999.88 appropriated to and received by the Nutt estate.

The plaintiff subsequently amended his petition, and asked that in the event of his not being entitled to compensation under the Denver contract he have judgment for such sum as his services were reasonably worth, which he alleged to be $30,000.

Some of the defendants by their answers put the plaintiff upon proof of his case but submitted to the court the question of the reasonableness of his claim for fees.

Three of the defendants, while not denying that plaintiff had been recognized by the executrix and subsequent administrators of Nutt's estate as the attorney of record against the United States Government, yet denied any legal liability of the estate by reason of such recognition. They averred that "the original contract and power of attorney as assignee of which petitioner claims to recover from the present administrator 33⅓ per cent of said sum of $89,999.88 were contrary to good morals and public policy, were null and void, so far as they undertook to vest a right to a contingent fee in said Denver, and conferred upon said Denver no rights for the recovery of any fee against this estate which a court would recognize and enforce. And respondents further charge that said petitioner, as assignee of said Denver, occupies no better position than his assignor had, and that as such assignee he has no standing in this court for the enforcement of said void contract, or for the enforcement of any claim whatever for professional services rendered by him, or alleged to have been rendered by him in behalf of said estate in connection with said claim against the United States Government."

Upon the final hearing of the case in the court of original jurisdiction the Chancellor rendered a decree holding that the Denver contract was "violative of the United States statute laws, and being further of the opinion that complainant in the prosecution of said claim under said contract before the Congress of the United States, in procuring and attempting to procure appropriations for the payment thereof, did procure personal solicitations to be made of members of Congress of the United States in behalf of said claim, and for the reasons stated is not entitled to the relief prayed for in his petition, doth order, adjudge and decree that complainant's petition be and the same is hereby dismissed at his cost, for which let execution issue."

Upon appeal to the Supreme Court of Mississippi the judgment was reversed, and that court, proceeding to render such decree as in its opinion should have been rendered, adjudged that the plaintiff was entitled "to his prayer for 33⅓ per cent of the amount collected by his administrator, $89,993.83, in full for any advance made by him and all services, less any payments made." 35 *So. R.* 686. The cause was remanded for an account to be taken and for an order directing the administrator to pay to Knut any balance of that per cent unpaid. The accounting was had in the inferior State court, Knut being charged with $10,000 paid on June 10th 1902, and allowed interest. The result was that a decree that the plaintiff have and receive from the administrator of Haller Nutt's estate the sum of $22,143.30, with six per cent interest. That decree, upon appeal, was affirmed by the Supreme Court of Mississippi.

The first question is one of the jurisdiction of this court. The present plaintiffs in error based their defense in part upon section 3477 of the

Revised Statutes,* which declares absolutely null and void certain transfers and assignments of claims against the United States. They insisted that the contract sued on was in violation of that statute; and that they and the estate of Nutt were protected by its provisions against any judgment whatever in favor of the plaintiff. In every substantial sense, therefore, they asserted a right and immunity under a statute of the United States, and such right and immunity was denied to them by the Supreme Court of Mississippi. That court expressly adjudged that the contract was not, on its face, in violation of the statutes of the United States, and could legally be the basis of a valid claim against the Nutt estate. The case, so far as our jurisdiction is concerned, is therefore within section 709 of the Revised Statutes, which authorizes this court to re-examine the final judgment of the highest court of a State, "where any title, right, privilege or immunity" is claimed under a statute of the United States, and the decision is against such title, right, privilege or immunity specially set up or claimed. A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States may be fairly held, within the meaning of section 709, to assert a right and immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary. Such has been the view taken in many cases where the authority of this court to review the final judgment of the State courts was involved. *Logan County Nat. Bank* v. *Townsend*, 139 *U. S.* 67, 72; *Railroads* v. *Richmond*, 15 *Wall.* 3; *Swope* v. *Leffingwell*, 105 *U. S.* 3; *Anderson* v. *Carkins*, 135 *U. S.* 483, 486; *McNulta* v. *Lockridge*, 141 *U. S.* 327; *Metropolitan Bank* v. *Claggett*, 141 *U. S.* 520; *McCormick* v. *Market Bank*, 165 *U. S.* 538, 546; *California Nat. Bank* v. *Kennedy*, 167 *U. S.* 362. We perceive no sufficient reason to modify the views expressed in those cases as to our jurisdiction. It is true there are some cases which, it is contended, justify a contrary view. We will not now stop to examine those cases narrowly and to declare

*"§ 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof, such transfers, assignments and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

wherein they may be in conflict with the cases above cited. Suffice it to say, that upon a careful reconsideration of the whole subject, and after reviewing all the cases bearing upon the precise question of jurisdiction now before us, we reaffirm the views expressed in the above-cited cases, as demanded by the statutes regulating the jurisdiction of this court.

We now come to the merits of the case as affected by section 3477 of the Revised Statutes. That section, as we have seen, declares null and void all transfers and assignments of a claim upon the United States, or of any part or share thereof, or any interest therein, whether absolute or conditional, and whatever may be the consideration thereof, and all powers of attorney, orders or other authorities for receiving payment of any such claim, or of any part or share thereof, unless they are freely made and executed after the allowance of the claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. This statute has been the subject of examination in many cases. *Spofford* v. *Kirk*, 97 *U. S.* 484; *United States* v. *Gillis*, 95 *U. S.* 407; *Erwin* v. *United States*, 97 *U. S.* 302; *Goodman* v. *Niblack*, 102 *U. S.* 556; *Ball* v. *Halsell*, *U. S.* 72; *Freedmen's Savings Co.* v. *Shepherd*, 107 *U. S.* 494; *Hobbs* v. *McLean*, 117 *U. S.* 567; *St. Paul & Duluth R. R.* v. *United States*, 112 *U. S.* 733; *Bailey* v. *United States*, 109 *U. S.* 410; *Price* v. *Forrest*, 173 *U. S.* 410.

If regard be had to the words as well as to the meaning of the statute, as declared in former cases, it would seem clear that the contract in question was, in some important particulars, null and void upon its face. We have in mind that clause making the payment of the attorney's compensation a *lien* upon the claim asserted against the Government and upon any draft, money or evidence of indebtedness issued thereon. In giving that lien from the outset, before the allowance of the claim and before any services had been rendered by the attorney, the contract, in effect, gave him an interest or share in the claim itself and in any evidence of indebtedness issued by the Government on account of it. In effect or by its operation it transfered or assigned to the attorney in advance of the allowance of the claim such an interest as would secure the payment of the fee stipulated to be paid. All this was contrary to the statute; for its obvious purpose, in part, was to forbid any one who was a stranger to the original transaction to come between the claimant and the Government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the Government. We are of opinion that the State court erred in holding the contract, on its face, to be consistent with the statute.

It does not follow, however, that, for this error, the judgment must be reversed. There is a provision in the contract of 1882 which can stand

alone and which was not in violation of the statute, namely, the one evidencing an agreement on the part of Nutt's executrix to pay to the attorney for his services a sum equal to 33⅓ per cent of the amount allowed on the claim. *Wylie* v. *Cox*, 15 *How.* 415; *Wright* v. *Tibbitts*, 91 *U. S.* 252; *Taylor* v. *Beniss*, 110 *U. S.* 43. Such an agreement did not give the attorney any interest or share in the claim itself nor any interest in the particular money paid over to the claimant by the Government. It only established an agreed basis for any settlement that might be made, after the allowance and payment of the claim, as to the attorney's compensation. It simply created a legal obligation upon the part of the estate, which, if not recognized after the collection of the money, could have been enforced by suit for the benefit of the attorney, without doing violence to the statute or to the public policy established by its provisions. The decree below may then be regarded as only giving effect to the agreement as to the basis upon which the attorney's compensation was to be calculated. It did not assume to give him any lien upon the claim or any priority in the distribution of the money received by Nutt's personal representative from the United States, nor upon any other money in his hands. Indeed, no lien is asserted by the plaintiff in his pleadings. While the original petition asserted his right to be paid in accordance with the contract, the plaintiff claimed, if he could not be paid under the contract, that he be compensated according to the reasonable value of his services.

Much was said in argument as to the nature of the services rendered by the plaintiff—the charge being that his services were of the kind called *lobby* services for which, consistently with public policy and public morals, no recovery could be had in any court. *Trist* v. *Child*, 21 *Wall.* 441; *McMullen* v. *Hoffman*, 174 *U. S.* 639. We have seen that the State court of original jurisdiction was of opinion the suit was for lobbying services, and on that ground denied all relief. But the Supreme Court of Mississippi held that the record did not establish such a case, and we accept that view of the evidence in the cause.

Finding in the record no error of law as to any question which may be properly reviewed by this court, the judgment of the State court is

Affirmed.

The CHIEF JUSTICE and Mr. Justice WHITE concur in the result.

True copy.

Test:

Clerk Supreme Court, U. S.